

**Upper Clark Fork River Basin Steering Committee
Meeting Summary
September 2, 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
Bob Benson	Clark Fork Coalition
Maureen Connor	Granite County Commissioner
Michele Landquist	Missoula County Commissioner
Jim Dinsmore	Granite Conservation District
Jules Waber	Powell County
Holly Franz	PPL Montana, LLC

Agency

Mike McLane	Department of Fish, Wildlife and Parks (DFWP)
Terri McLaughlin	Department of Natural Resources and Conservation (DNRC)
Larry Schock	DNRC Missoula
Ethan Mace	DNRC Missoula

Staff

Gerald Mueller	Facilitator
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Agenda

- Review June 23, 2010 Meeting Summary
- Updates
 - Steering Committee Membership
 - Steering Committee Budget and Expenditure
 - Briefing Notebook Update
 - Plan Revision Meeting
 - Other Organizations
- WPIC Draft Report and Legislation
- Water Right Change Process
- Basin Closure Follow Up
- Public Comment
- Next Meeting

June 23, 2010 Meeting Summary

The Steering Committee made no change to the June 23, 2010 meeting summary.

Updates

Steering Committee Membership - Gerald Mueller reported on changes to the Steering Committee membership. 85-2-338 provides that the Steering Committee has 22 members. Each

of the basin's counties and conservation districts may appoint one member, and the DNRC Director must appoint the remaining ten to ensure that committee membership includes a balance of affected basin interests. Steering Committee members serve for four-year terms and may be reappointed. Because the term of almost all of the Steering Committee members have or will soon expire, Mr. Mueller recently wrote to each of the basin's counties and conservation districts inviting them to appoint a member. All of the counties either have or are in the process of making an appointment. Of the six conservation districts, only Mile High and North Powell have not made or are not considering an appointment. Mr. Mueller also contacted Ann Schwend about DNRC Director appointments. Of the current members appointed by the DNRC Director, only Nate Hall has not sought reappointment or expressed a willingness to serve. The City of Deer Lodge has requested that Darryl Barton be appointed as its representative. The list of current Steering Committee members is included below in Appendix 1.

Steering Committee Budget and Expenditure - Gerald Mueller reviewed the Steering Committee budget and expenditures to date for FY2010-11 which is shown in the following table.

Category	FY 2010		FY 2011	
	Budget	Expenditures	Budget	Expenditures
Facilitation Services	\$10,000.00	\$10,000.00	\$10,000.00	
Meeting Expenses	\$900.00	\$627.19	\$900.00	
Member Mileage	\$3,000.00	\$444.00	\$3,000.00	
Publications and Education	\$2,100.00	\$575.54	\$2,100.00	
Other	\$996.00	\$0.00	\$996.00	
Totals	\$16,996.00	\$11,646.73	\$16,996.00	

Steering Committee funds are included in the DNRC base budget.

Briefing Notebook Update - Gerald Mueller stated that a briefing book is available for Steering Committee members. It contains: the statute authorizing the committee and setting forth its responsibilities, 85-2-338; the Steering Committee ground rules; the list of members; the FY2010-11 budget and expenditure report; recent meeting summaries; the Steering Committee accomplishments; the Milltown Dam water rights paper; the outline of the water management plan revision; and the 1994 *Upper Clark Fork Basin Water Management Plan*.

Comment - The Steering Committee's paper on the water rights adjudication should be included in the briefing book.

Response - I will add it. This paper was written in 2004. The Steering Committee helped push for passage of the legislation creating a \$10 charge on most existing water rights to fund the DNRC's and the Water Court's adjudication work so that the adjudication could be finished by 2025.

Comment - The money set aside to complete the adjudication may be at risk during the 2011 legislature. The Steering Committee should seek to preserve this fund and oppose its diversion

to other purposes.

Comment - I recently received a bill for my water rights to pay for the adjudication.

Response by Larry Schock - Your bill must be either finishing the previous bill from the 2006 water right assessments or an ownership transfer fee. In 2007, the legislature abolished the water rights fee and replaced it with a general fund appropriation set aside in a separate fund. This is the fund that may be at risk in this coming legislative session because of the anticipated structural deficit.

Comment - Water right ownership changes have been a problem in the adjudication. For example, ranches in the Bitterroot have been sold and subdivided. The water right has been divided among the new lots, but the ownership changes have not been recorded.

Plan Revision Meeting - Gerald Mueller stated that he is planning to convene a meeting of basin water related groups and interests to review the water management plan revision during the week of October 18, most likely on October 19 or 21. He reminded the committee to send him names of groups and/or individuals that should be invited to the meeting.

Other Organizations - As a water right owner, the Clark Fork Coalition and four other water right holders petitioned DNRC to issue a declaratory ruling that the current administrative rule definition of “combined appropriation” set forth in Rule 36.12.101(13) ARM be declared invalid and the department initiate rule making to amend the definition. DNRC recently ruled on the petition determining that the existing definition is consistent and not in conflict with applicable law. It also ruled that increasing demands on Montana water resources warrant repeal of 36.12.101(13), and the department will within eight months initiate rule making to adopt a new definition of “combined appropriation.” At the end of the ruling, the DNRC hearings examiner wrote:

The Department is evaluating a new “combined appropriation” administrative rule definition that would allow an exempt well to serve up to twelve residential lots with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year. The Department will consider other factors such as closed basins and geographic area.

The petitioners are apparently considering appealing DNRC’s ruling.

Question - How do other states handle exempt wells?

Answer - Some states allow exemptions for in-house consumption. Montana law current provides for a broad exemption based only on well flow rate and volume. No purpose of use is addressed.

Question - Under DNRC’s proposal, twelve homes with a combined use under 10 acre-feet per year would be exempt?

Answer - The language in DNRC’s decision does mention this as a possibility, but it is not a rule proposal. The proposal will be issued within eight months.

Comment - Our commission has reviewed subdivision proposals where water was not available. DNRC sometimes comments on subdivision applications by recommending community wells. Some political subdivisions have been happy and some unhappy with such recommendations.

Comment - The tie between wells and sanitary systems is important. Septic drain fields need to be specified.

Comment - Counties must look at health, welfare and safety. People do not understand the need to maintain wells and septic systems.

WPIC Draft Report and Legislation

Gerald Mueller and Holly Franz discussed the draft report and draft bills under consideration by the Water Policy Interim Committee (WPIC). Next week, at its final meeting for this interim on September 8-9, WPIC will take final action on the report and the bills. Mr. Mueller's memorandum summarizing the report and bill drafts that was previously sent to Steering Committee members is attached below in Appendix 2. Mr. Mueller asked the Steering Committee for guidance as to testimony he should make at the WPIC meeting on its behalf.

LC9002 would allow a water right holder wishing to market his or her right to prove what the historic use was so that the amount of water that might be marketed would be known. The person purchasing the water would still have to file for a change of use so that the adverse affects test would be applied.

Question - Who was the author of LC9002?

Answer - WPIC requested a proposal from a committee of water interests, including senior agricultural, real estate and developers, environmental groups, and others. Ms. Franz was a member of the group.

Question - Does the bill specify the purpose for the marketing?

Answer - No.

Question - Does LC9002 include provisions for monitoring and reporting?

Answer - Yes.

Comment - The challenge with this legislation is determining how much preapproval is enough. The goal is to facilitate getting marketing through the water right process without including the specific details that would need to be addressed to ensure protection of senior water right holders.

Comment - The memorandum does not summarize LC9004 and LC9005, but both are a concern to counties. LC9004 addresses septic system mixing zones. It would require that a mixing zone be located wholly within the lot or subdivision where the drain field is located unless an easement is required allowing the mixing zone onto an adjacent property. LC9005 clarifies the authority of local governments to require public water supply systems and public sewer and wastewater systems for subdivisions.

Comment - The attorney representing the Montana Association of Counties has advised counties that they lack the authority to require public water systems.

Question - How is the boundary of mixing zones determined?

Answer - The Montana Department of Environmental Quality and the county sanitarian use formulas based on soil type to determine the mixing zone boundaries.

Comment - I would appreciate the Steering Committee's support of LC9005.

Comment - The last two years, the well drillers and the development community have focused on the exempt well issue and will likely oppose any statutory system that force them into the permit system.

Comment - Banks are unwilling to loan money to developers for infrastructure such as community water and sewer systems.

Comment - The Montana Association of Planners will be holding their annual meeting later this month in Missoula, and exempt wells is on the meeting agenda.

Comment - We need to create incentives for community systems so we can encourage their use without stopping development.

Question - Does LC9999 include fees in agency processes or just district court fees?

Answer - The original draft of this bill included fees during DNRC processes, but this provision was removed by WPIC.

Comment - The Steering Committee in 1995 sought passage of a statute allowing a successful objector in a hearing on a new water right permit or a change to bring action in district court for costs and attorney fees in the Clark Fork basin. Our reason for doing so was to protect existing water rights. I am not completely sure that the award of costs and attorney fees is not having a dampening effect on people acting to protect their water rights.

Comment - The current statute, that replaced the 1995 Clark Fork statute, mandates that the prevailing party in a district court appeal of a DNRC permit decision shall be awarded reasonable costs and attorney fees. Some existing water right holders are opting not to appeal DNRC decisions because of the risk that if they lose they will have to pay costs and attorney fees. LC9999 makes the award of costs and attorney fees subject to the discretion of the district court judge. In cases where both sides make reasonable arguments, the judge likely will not award costs and fees. LC9999, therefore, probably reduces risk to existing water right holders.

Steering Committee Action - Those members of the Steering Committee present at today's meeting authorized Mr. Mueller to testify on the Steering Committee's behalf at the WPIC meeting in support of LC9005, the local government authority bill, and LC9999, the cost and attorney fee recovery bill.

Water Right Change Process

Terri McLaughlin discussed the change of use process and responded to Steering Committee member questions and comments.

DNRC must issue a permit before a water right holder can change the point of diversion, place of

use, purpose of use, or the place of storage. A permit cannot be obtained to change the period of use. Change permits are not required to convert from flood to sprinkler irrigation if the irrigation would continue in the same footprint and would not increase the amount of water consumed. The application and requirements for a change permit are available on the DNRC Water Rights Bureau web page at the following address.

http://www.dnrc.mt.gov/wrd/water_rts/wr_general_info/wrforms/606.pdf

A change permit can be obtained only for the amount of water historically consumed. This aspect of the change generates the most controversy. Some users are concerned that through the change process, the department takes away a portion of a water right, even if it has been decreed by the Montana Water Court. This is not the case. Beneficial use is the basis and limit of a water right. The Water Court and the DNRC have different roles regarding water rights. The Water Court reviews pre-1973 water claims and creates a list of water rights, confirming the right priority date and amount of use. The Court does not look at full versus partial water service, i.e. whether the source is adequate to provide full service. It does not identify the consumed portion of a water right, nor does it determine adverse affects on other users. Finally, the Court does not determine a volume for irrigation claims. To issue a change permit, the DNRC must determine the basis of the water right to be changed. The department must consider whether the changed use would put an additional burden on the water source. It must look at how the water right was operated prior to 1973, how much of the right was consumed, whether return flows are relied on by other users, and the volume of water use. All western states require change permits and in issuing them considers the historic consumptive use of a water right. As a result of these requirements when considering a change, the DNRC conducts a more scientific review of a water right than does the Water Court in issuing water right decrees. In 1988, a study commissioned by the legislature, known as the Ross Report, stated that the accuracy of the adjudication would be tested through the change process.

Question - If a point of diversion is changed slightly for mechanical reasons, is a change permit required?

Answer - The 2009 session of the legislature passed a bill providing for an exception for a change of point of diversion caused by deterioration or natural causes.

Question - Would a change to the diversion structure require a change permit?

Answer - No.

Question - What if a ditch with 10 users over a 13 mile length was lined to eliminate leaks. Would a change be required?

Answer - If the source of water for the ditch is not changed, and the use of the water conveyed by the ditch is not changed, then a change permit would not be required. Increasing conveyance efficiency does not require a change permit. If lining the ditch results in a change of use of the source water, say to instream flows or to an increase in the amount of water consumed by irrigating additional acres, then a change is necessary.

Question - What if domestic water use is supported by ditch leakage?

Answer - A water user is not required to waste water; thus a domestic user relying on ditch leakage cannot prevent the lining of the ditch to increase conveyance efficiency.

Comment - The argument in this case is over whether a well is capturing source water or leakage from a ditch.

Question - Lining a ditch to increase flows in the source would require a change?

Answer - Yes, lining ditch to keep more flow in the river or stream that is the source of water for the ditch for instream fishery purposes would require a change permit. New protectable water uses require a change permit. Some groups that fund ditch lining seek only a reduced use of the supply, not a protectable water right. In these cases no water right change is sought.

Question - If a well dries up as a result of a ditch lining project have standing to object?

Answer - The well owner may have standing to object, but may not prevail. A water user cannot be forced to waste water to provide the well owner a supply of water. Standing requires only an interest in a particular water use. To prevail, a party must have standing and a water right.

Question - What is the difference between waste water and return flow?

Answer - Return flow is water that moved through a beneficial use and returned to the source via ground water. Waste is water lost through seepage.

Question - The Water Court is creating enforceable decrees. If a diversion is mapped incorrectly or the decree specifies the wrong period of use are change issues created?

Answer - Yes, if the decree is not fixed change issues may result. Decrees can be amended, but some people are not aware of the process for doing so.

Question - Is a map a legal definition of a diversion?

Answer - Maps use a centroid of an area of one quarter by one quarter by one quarter. Maps therefore can be updated as a clerical matter. A wrong legal description of a diversion requires a decree amendment.

Question - What if a ditch name is not correct?

Answer - Ditch names are not significant. Names can generally be corrected without a decree amendment.

Comment - After the first year of implementation of an enforceable decree, water users often meet to identify errors in the decree. They can gather evidence about the errors and petition the Water Court to fix the decree.

Question - Regarding DNRC's evaluation of historic consumptive use, how does one prove in the absence of written records that some years have only partial irrigation service?

Answer - DNRC looks at the maximum service using the Water Resources Survey, aerial photographs, NRCS data, and other sources of information.

Comment - For traditional agriculture producers, trying to prove historical consumptive water use is hard.

Response - The DNRC rule provides an alternative statistical method if no documentation exists. The irrigation requirement in the rule can be calculated by dry year minus precipitation adjusted for average county productivity.

Comment - The word on the street is don't apply for a change or you will lose water.

Basin Closure Followup

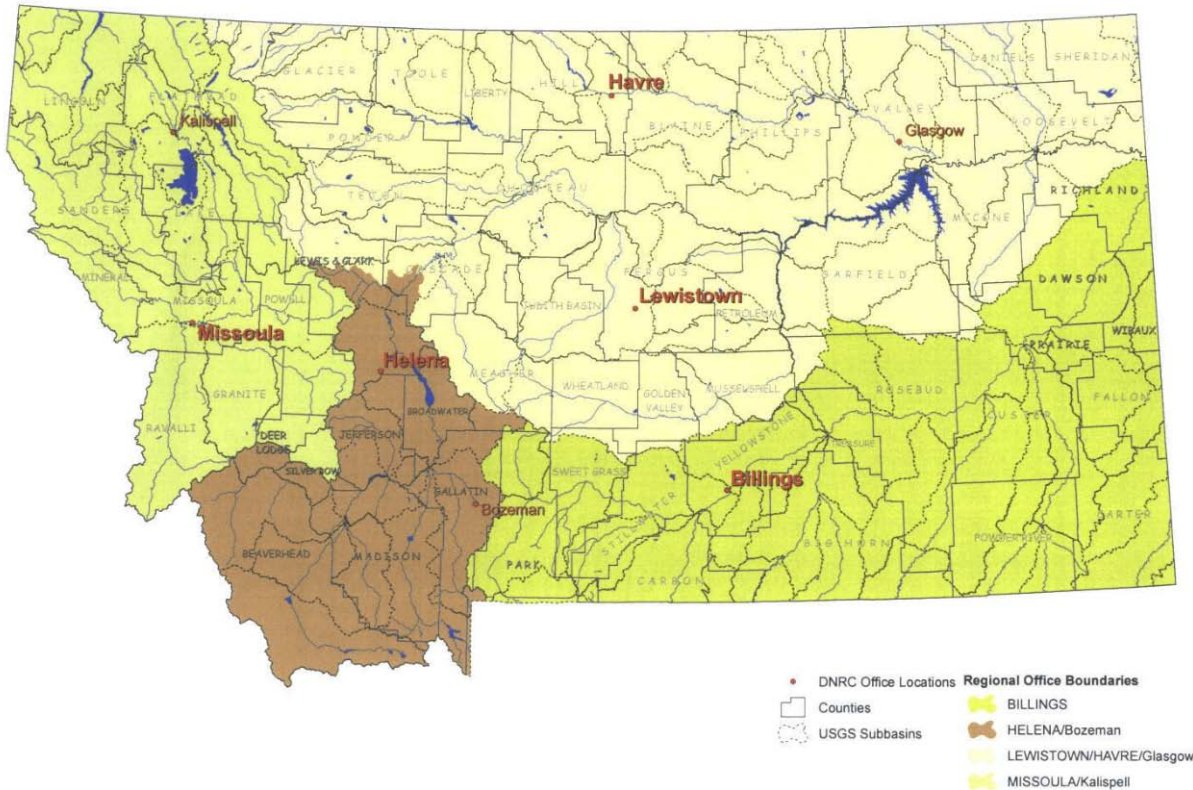
Gerald Mueller passed out information regarding water right permits in the upper Clark Fork River basin provided by the two DNRC Regional Office Managers, Terry Eccles and Bill Schultz. Mr. Eccles and Mr. Schultz also provided comments on the basin closure. In response to this information, the Steering Committee asked three questions:

- What is the boundary between the Helena and Missoula regional offices?
- How many exempt well and other permits have been issued by both regional offices since 2007?
- What information is available about non-consumptive permitting activities in other basins?

Ms. McLaughlin and Mr. Schock provided the following information regarding these questions.

Regional Office Jurisdictions - Although current personnel have not enabled both offices to implement it yet, the goal is to specify the regional office jurisdictions according to the following map.

Regional Office Boundaries Montana Department of Natural Resources and Conservation Water Resources Division



2008

Exempt Well and Other Permits - Information about basin new permit and change applications and exempt well notice of completion (602) files is contained in Appendix 3.

Non-consumptive Permitting Activities - Information about the non-consumptive permit applications and pump storage application near Canyon Ferry and Garrison is contained in Appendix 4. Maps of the two pump storage sites are provided separately in pdf format to reduce the file size of this summary.

Comment - The Steering Committee did not include an exemption for non-consumptive uses in the original basin closure proposal because of a concern about what the definition of non-consumptive might be. Place mining, ponds, and hydropower are non-consumptive uses that may dewater a portion of a stream.

Comment - The Department of Fish, Wildlife and Parks is concerned about the impact of “non-consumptive” water uses on the fishery.

Comment - There two kinds of non-consumptive hydropower projects. One diverts water from a stream to run it through one or more off-stream turbines to generate hydropower. This type dewater a portion of a river or stream. Another places turbines directly in a stream so that no dewatering occurs.

Comment by Gerald Mueller - We will revisit the non-consumptive water uses that do not divert water from a river or stream at the next meeting.

Public Comment

There was no additional public comment.

Next Meeting

The next meeting was scheduled for Thursday, October 7, 2010 at St. Mary’s Center in Deer Lodge. The group agreed to hold the first Thursday of the month for Steering Committee meetings.

Appendix 1
Upper Clark Fork River Basin Steering Committee Members

Name	Area or Organization	Appointment Entity	Date Appointed
Bob Benson	Clark Fork-Pend Oreille Coalition	DNRC Director	1997
Stan Bradshaw	Trout Unlimited	DNRC Director	1991
Bob Bushnell	Lincoln Area Rancher	Lewis and Clark Conservation District	2010
Maureen Connor	Granite County Commissioner	Granite County Commission	2010
Don Despain	Deer Lodge Valley	Deer Lodge Valley Conservation District	2010
Jim Dinsmore	Hall Rancher	Granite Conservation District	1991
Holly Franz	PPL Montana	DNRC Director	1991
Carol Fox	Natural Resource Damage Program	DNRC Director	2003
Rebecca Guay	Anaconda-Deer Lodge County	Anaconda-Deer Lodge County Commission	2010
Michele Landquist	Missoula County Commissioner	Missoula County Commission	2010
Sen. Dave Lewis	Lewis and Clark County	Lewis and Clark County Commission	2006
Jim C. Quigley	Little Blackfoot Rancher	DNRC Director	1991
Pat Saffel	DFWP	DNRC Director	2003
Marci Sheehan	ARCO	DNRC Director	2007
Rep. John Sesso	Butte/Silver Bow Planner	Butte/Silver Bow Commission	1997
Jules Waber	Powell County Superintendent of Schools	Powell County Commission	1997

Appendix 2
Upper Clark Fork River Basin Steering Committee
C/O Gerald Mueller
440 Evans
Missoula, MT 59801
(406)543-0026

MEMORANDUM

Date: July 30, 2010
To: Bob Benson, Bob Bushnell, and Jim Quiggley
From: Gerald Mueller
RE: Draft WPIC Report and Legislation

The Water Policy Interim Committee (WPIC) has issued a draft report including draft legislation and is soliciting public comment on it until August 30, 2010. The full draft report is available at: http://leg.mt.gov/content/Committees/Interim/2009_2010/Water_Policy/Meeting_Documents/September2010/boiling-it-down-public-comment.pdf. The WPIC will also take public comment at its September 8 and 9, 2010 meeting in Helena.

The report addresses some areas that the Steering Committee has considered and some that we have not. Based on our past discussions, I have enclosed for your review the following sections of the draft: Draft Findings and Recommendations, Water and the Way of the West, Water Rights as Property: Who Enforces the Right?, Exempt Wells - No Permit Necessary, and Changing Water Use. Two bills address areas of particular interest: LC9002 (water marketing) and LC9999 (award reasonable costs and attorney fees). I will attempt to summarize key provisions of these two bills below.

Water Right Enforcement - The section on water rights enforcement states:

There are a variety of possible explanations for the emphasis on private rather than government enforcement. The primary reason may stem from the legal characterization of water rights as a form of real property. On one hand, the classification of water rights as real property has resulted in the recognition that water rights have value and can be transferred, inherited, devised, encumbered, and disposed of in much the same way as real property. On the other hand, it may be why much of the enforcement burden has been placed upon private individuals. Real property rights are usually enforced through private party actions without government involvement.

The report does not discuss the time and expense necessary for individual water right holders to access and get a decision from district court and that for at some water right holders the time and expense can render enforcement moot.

Exempt Wells - At present, the report contains a discussion, but no findings or recommendations regarding exempt wells.

Water Right Changes - The section entitled "Changing Water Use" includes a detailed

examination of water right changes, a topic requested for the next Steering Committee meeting agenda.

LC9002 (water marketing) - The full title of this bill is "An Act generally revising water laws related to aquifer recharge and mitigation; providing up to 20 years to complete a of use to aquifer recharge or mitigation; clarifying that nonuse of an appropriation right during a completion period does not create a prima facie presumption of abandonment; and amending sections 85-2-102, 85-2-310, 85-2-402, and 85-2-404, MCA." Key provisions of the bill include authorizing a water right change for water marketing for aquifer recharge and mitigation and specifying that during the period approved by DNRC for marketing the water (up to 20 years), nonuse of an appropriation right does not create a prima facie presumption of abandonment and may not be added to a previous period of nonuse to create a prima facie presumption of abandonment. A change application for marketing must specify the place of use but need not have the detail about the person(s) that would use the water required in other changes.

LC9999 (cost and attorney fee awards) - The full title of this bill is "An Act providing the district court discretion to award reasonable costs and attorney fees incurred as a result of an appeal of a final decision on a permit application or change in appropriation right; amending section 85-2-125, MCA; providing an immediate effective date and an applicability date." The Steering Committee has been interested in the award of costs and attorney fees in water right proceedings as a way of easing the burden of enforcing water rights through district court actions. We got a temporary statute passed in 1995 authorizing the award of costs and attorney fees in hearings and decisions involving the Upper Clark Fork basin. This temporary statute expired in 2005 and was replaced with with provisions allowing recovery of costs and allowing a party who has obtained injunctive relief enforcing a water right to recover costs and attorney fees. LC9999 provides the district court the discretion to award costs and attorney fees to the prevailing party in an appeal of a final DNRC decision on an application for water right permit or change. Existing statutory provisions requiring the award of costs and attorney fees to a water right holder who obtains injunctive relief to enjoin the use of water by a person that does not have a water right are not changed in LC9999.

Next Steering Committee Meeting - The next Steering Committee meeting is scheduled for Thursday, September 2, which is after the public comment period but before the WPIC meeting. I will, therefore, put the draft WPIC report on bills on the September 2 meeting agenda.

Appendix 3 Permit and Change Applications

APPL #	BASIN	APPL TYPE	OWNER LAST NAME	VERSION	STATUS	YEAR RCD	MONTH RCD	DAY RCD	FORM RCD	COMMENT HB831	ISSUE DATE	COMMENT
30041590	76F	600	BIG SKY LAKE HOMEOWNERS ASSOC	TERMINATED		2008	3	24				Inadequate response to deficiency letter
30043262	76F	606	4227 HIGHWAY 83 TRUST	ISSUED		2008	9	2			1/29/2009	Change Authorization - Domestic
30043398	76G	606	RUSSELL PROPERTIES & ERICKSON	ISSUED		2008	9	12			10/27/2009	Change Authorization-Irrigation POD/POU
30043966	76E	606	ROCKING J RANCH LLC	ISSUED		2008	11	5	HB831		10/5/2009	HB831 Mitigation Change
30043968	76E	600	ROCKING J RANCH LLC	ISSUED		2008	11	5	HB831		10/5/2009	HB 831 Permit
30044937	76F	638	USDA FS - BOLES CR	ISSUED		2009	1	26	USFS Water Reservation		6/29/2009	Instream Flow
30046650	76G	638	USDA FS - BLACKTAIL CR	ISSUED		2009	8	6	USFS Water Reservation		5/11/2010	Instream Flow
30046651	76F	638	USDA FS - W FK CLEARWATER R	ISSUED		2009	8	6	USFS Water Reservation		5/11/2010	Instream Flow
30046652	76F	638	USDA FS - PLACID CR	ISSUED		2009	8	6	USFS Water Reservation		5/11/2010	Instream Flow
30047720	76F	638	USDA FS - DEER CR	ISSUED		2009	12	17	USFS Water Reservation		5/11/2010	Instream Flow

**2007-2010 Upper Clark Fork River Basin Permits
600 (Wells Larger than 35 gpm) and 602 (Exempt Well Notice of Completions)**

Count of APTP_CD					
FRMR	BOCA_CD	APTP_CD	WRST_CD	Total	
2007	76F	602	ACTV	43	
			TERM	1	
		602 Total			44
	76F Total				44
	76G	602	ACTV	73	
			TERM	2	
		602 Total			75
	76G Total				75
	76GJ	602	ACTV	27	
			602 Total		
76GJ Total				27	
2007 Total				146	
2008	76F	602	ACTV	48	
			TERM	3	
		602 Total			51
	76F Total				51
	76G	602	ACTV	97	
			TERM	3	
		602 Total			100
	76G Total				100
	76GJ	600	TERM	1	
			600 Total		
602		ACTV	24		
		602 Total			24
76GJ Total				25	
2008 Total				176	
2009	76F	602	ACTV	37	
			CANC	1	
			PEND	2	
			TERM	1	
	602 Total			41	
	76F Total				41
	76G	602	ACTV	52	
			PEND	3	
		602 Total			58
	76G Total				58
76GJ	602	ACTV	21		
		602 Total			21
76GJ Total				21	
2009 Total				120	
2010	76F	602	ACTV	9	
			PEND	4	
		602 Total			13
	76F Total				13
	76G	602	ACTV	8	
			PEND	8	
		602 Total			16
	76G Total				16
76GJ	602	PEND	2		
		602 Total			2
76GJ Total				2	
2010 Total				31	
(blank)	(blank)	(blank)	(blank)		
(blank) Total					
(blank) Total					
Grand Total				473	

Count of APTP_CD				
FRMR	BOCA_CD	APTP_CD	WRST_CD	Total
2007	76E	602	ACTV	12
		602 Total		12
	76E Total			12
	76F	602	ACTV TERM	43 1
		602 Total		44
	76F Total			44
	76G	602	ACTV TERM	73 2
		602 Total		75
	76G Total			75
	76GJ	602	ACTV CANC	26 1
		602 Total		27
	76GJ Total			27
	2007 Total			158
	2008	76E	600	ACTV
		600 Total		1
		602	ACTV TERM	9 1
		602 Total		10
		606	ACTV	1
		606 Total		1
76E Total				12
76F		602	ACTV TERM	48 3
		602 Total		51
76F Total				51
76G		602	ACTV TERM	97 3
		602 Total		100
		606	ACTV	1
		606 Total		1
76G Total				101
76GJ		600	TERM	1
		600 Total		1
		602	ACTV	24
	602 Total		24	
76GJ Total			25	

2008 Total				180
2009	76E	602	ACTV	12
		602 Total		12
	76E Total			12
	76F	602	ACTV CANC PEND TERM	37 1 2 1
		602 Total		41
	76F Total			41
	76G	602	ACTV PEND TERM	52 2 4
		602 Total		58
		606	ACTV	1
		606 Total		1
	76G Total			59
	76GJ	602	ACTV	21
		602 Total		21
	76GJ Total			21
2009 Total			133	
2010	76E	602	ACTV PEND	1 1
		602 Total		2
	76E Total			2
	76F	602	ACTV PEND	12 9
		602 Total		21
	76F Total			21
	76G	602	ACTV PEND	18 6
		602 Total		24
	76G Total			24
	76GJ	602	ACTV PEND	1 5
		602 Total		6
	76GJ Total			6
	2010 Total			53
	(blank)	(blank)	(blank)	(blank)
		(blank) Total		
	(blank) Total			
(blank) Total				
Grand Total				533

Appendix 4

NON-CONSUMPTIVE PERMITS

2000-2010

9/1/2010

BASIN	WTR NO.	APPL TYPE	ISSUE DT	OWNER	SOURCE	PURPOSE
40J	30005160	600	08/29/2003	MSU-Northern	GW	GEOTHERMAL
40J	30023486	600	04/27/2007	MSU-Northern	GW	GEOTHERMAL
41Q	30042060	600	04/15/2009	PPL Montana	Missouri Rv	POWER GENERATION
41S	30026260	600	02/12/2009	Dan Bartell, USFS	Yogo Ck	MINING
43BJ	30002855	600	05/27/2003	Stillwater Mining Co	Brownlee Ck	MINING
76B	30020640	600	10/23/2006	Jozef Debolera	Kilbrennan Ck	POWER GENERATION
76H	98562	600	01/12/2000	Double Fork LLC	Bitterroot Rv	FISHERY
76H	30000947	600	04/28/2003	Ravalli Co	GW	GEOTHERMAL
76H	30046166	600	11/16/2009	Missoula Federal Credit Union	GW	GEOTHERMAL
76L	30046729	600	11/03/09	Paul Sattler	GW	GEOTHERMAL
76LJ	117018	600	05/14/2002	Jerry King	GW	GEOTHERMAL
76LJ	117019	600	05/24/2002	Jerry King	GW	GEOTHERMAL
76LJ	30044584	600	10/28/2009	4CAVS LLC	GW	GEOTHERMAL
76M	108680	600	01/13/2000	Blackfoot Telephone Coop	GW	GEOTHERMAL
76M	108761	600	04/12/2001	USFS	GW	GEOTHERMAL
76M	110700	600	08/14/2002	Dana Thingelstad	Sevenmile Ck	POWER GENERATION
76M	114446	600	01/28/2003	Millennium Building LLC	GW	GEOTHERMAL
76M	30000963	600	04/16/2003	Leadore Land Partners	GW	GEOTHERMAL
76M	30001162	600	05/30/2003	Missoula Co Airport Authority	GW	GEOTHERMAL
76M	30024701	600	02/22/2007	Thomas Tibbles	Quartz Ck	POWER GENERATION
76M	30025342	600	03/02/2007	GW Development LLC	GW	GEOTHERMAL
76M	30025401	600	03/14/2007	Missoula Co Airport Authority	GW	GEOTHERMAL
76M	30025519	600	01/11/2008	JB Productions	GW	GEOTHERMAL
76M	30028677	600	09/24/2007	BLM	GW	GEOTHERMAL
76M	30041556	600	11/07/2008	First Interstate Bank of Missoula	GW	GEOTHERMAL
76M	30042082	600	08/22/2008	Missoula Federal Credit Union	GW	GEOTHERMAL
76M	30044954	600	07/02/2009	Frenchtown School	GW	GEOTHERMAL
76M	30045957	600	09/25/2009	Missoula Public Library	GW	GEOTHERMAL
76M	30047514	600	05/18/2010	DNRC State Lands	GW	GEOTHERMAL
76M	30048273	600	08/16/2010	Town Pump Inc	GW	GEOTHERMAL

DNRC, Water Rights Bureau

PUMPED STORAGE PROJECTS FOR HYDROPOWER

IRON MASK PROJECT — W-NW of Townsend

- Source of water Canyon Ferry water - Contract with BOR [initial fill & evaporation]
- 2 - 4800 AF impoundments
 - o 119 acres x 3 AF = 357 AF evaporation
 - o Upper reservoir on Sheps Gulch, tributary to Indian Creek
 - o Lower reservoir may encompass some drainage to Canyon Ferry
- Upper Missouri Basin closure
 - o No exception for consumptive hydropower
 - o Only storage of "High Spring Flows"
- Unknowns
 - o May be required to allow tributary water to pass impoundments
 - o May need a change in place of use for BOR contract water

GARRISON PROJECT — N-NW of Garrison

- Source of water Use water from existing ground and surface water right holders and new groundwater if needed
- 2 - 7175 AF impoundments
 - o 208 acres x 3 AF = 624 AF evaporation
 - o Lower dam appears to be on Brock Ck
 - o Upper dam appears to be off-stream created by embankments
- Upper Clark Fork Basin closure
 - o No exception for new hydropower
 - o Exception for storage
- Unknowns
 - o Changing Existing Water Rights
 - Would need to find existing water rights to purchase/lease
 - Would need to change Purpose, POD, Place of use
 - Might require multiple applications if a number of water rights are needed to meet volume needed
 - Depending on where the rights in the basins are being changed from
 - 85-2-402(4) 4000AF & 5.5cfs requires that the change in purpose or POU be a reasonable use, a consideration of:
 - Existing demands on the source, projected demands for future uses
 - Benefits to applicant and the state
 - Effects on quantity and quality of water for existing uses
 - Feasibility of using low-quality water
 - Effects on private property rights by saline seep
 - Probable significant adverse environmental impacts
- o New Permit
 - Groundwater:
 - Comply with MCA 85-2-360-hydrologic assessment
 - MCA 85-2-317GW >3000AF requires Legislative approval
 - Surface water for storage