

MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force (Task Force)
FROM: Gerald Mueller
SUBJECT: Summary of the December 5, 2011 Force Meeting
DATE: December 8, 2011

Participants

The following people attended the Task Force meeting:

Task Force Members:

Nate Hall	Avista Utilities
Ted Williams	Flathead Lakers
Marc Spratt	Flathead Conservation District
Verdell Jackson	Senate District 5
Jim Dinsmore	Upper Clark Fork
Harvey Hackett	Bitter Root Irrigation District
Gail Patton	Clark Fork basin counties
Brianna Randall	Clark Fork Coalition

Agency

Ann Schwend	Montana Department of Natural Resources and Conservation (DNRC)
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Public

Molly Smith	University of Montana Department of Geography
Steve Mauer	Missoula Area Chamber of Commerce

Staff

Gerald Mueller	Consensus Associates
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Meeting Agenda

- Introduction
- November 7, 2011 Steering Committee Meeting Summary
- Grant Opportunities
- Updates
 - Confederated Salish and Kootenai Tribes Compact Letter
 - Upper Clark Fork River Basin Steering Committee
 - Other Organizations
- Task Force Administration
 - Coordinator solicitation.
 - Ground rules
 - Organization
- Public Comment
- Next Meeting

November 7, 2011 Steering Committee Meeting Summary

No changes were made to the November 7, 2011 meeting summary.

Grant Opportunities

Mark Spratt stated that there are opportunities for Task Force to apply for grants, some of which offer large dollar amounts over longer periods. One from the Bureau of Reclamation has an application deadline of January 19, 2012. This grant is very competitive and would likely require partnership with an academic institution. He asked how the Task Force might want to handle grant applications. Mr. Mueller noted that because it is not a legal entity, the Task Force would have to apply through another entity.

Comment by Ann Schwend - As we have previously discussed, I am developing an agreement between the Task Force and Granite Conservation District (GCD) that provides that the GCD will act as the Task Force's fiscal agent. A conservation district is able to pursue grant funding for non-profit entities and government agencies

Question - When will the Task Force would begin work on the revision of the basin water management plan?

Answer by Gerald Mueller - The Task Force has not yet adopted a statement of its scope of work for the coming biennium. We had agreed to do so after a coordinator was selected.

Answer by Ann Schwend - I am working on a scope of work for the Renewable Resources Grant and will work with the Task Force on a draft proposal prior to the next meeting.

Updates

Confederated Salish and Kootenai Tribes Compact Letter - Gerald Mueller reported that the Task Force has not yet received a reply to its November 16, 2011 letter to Chris Tweeten. The Upper Clark Fork River Basin Steering Committee has received a response to its October 12, 2011 letter to Mr. Tweeten regarding the State of Montana's proposal for addressing the Confederated Salish and Kootenai Tribes' (CSKT's) off-reservation water right claims. The Steering Committee's letter included questions about details of the State's proposal focused primarily on the Milltown Dam water rights. Mr. Tweeten's reply acknowledged the importance of the Steering Committee's questions but did not answer them. The letter did say that the State may pursue the change in the Milltown rights through the compact ratification legislature rather than the DNRC water right change permit process. Mr. Mueller stated that he expects a similar reply to the Task Force's November 16, 2011 letter, i.e., the group is asking good questions but answers are not yet available. Mr. Mueller noted that the Compact Commission has said that the negotiating parties expect to have a draft compact for public review in July 2012, and that they understand that a robust public review process is necessary.

Comment - The CSKT have not yet responded to the State's off-reservation proposal, and the State is unlikely to respond to Task Force questions until the Tribes do respond.

Comment - There has been very little public discussion of the compact outside of the negotiating sessions and the press has not covered the compact.

Comment - The negotiation among the parties does not take place at the public negotiating sessions. It takes place at the staff level in meetings that are not noticed or open to the public.

Question - Has the basin's conservation districts been reviewing compact proposals?

Answer by Ann Schwend - I chair the Water Resources Committee of the Montana Association of Conservation Districts, and this may be a good topic for the committee.

Comment - A key issue is how someone would move water from one place to another in light of the compact.

Comment - In my experience agency staff tend to be risk adverse and therefore seek to avoid discussing compact details. The Task Force might consider holding a competition among entities in the Pacific Northwest states about how to address off-reservation water rights.

Comment - I recommend that the Task Force write a letter to the State and the CSKT offering to co-sponsor a series of public meetings around the basin on the compact.

Task Force Action - Those members of the Task Force present at this meeting agreed that Mr. Mueller should draft and circulate for member comments a letter to Compact Commission Chairman Chris Tweeten and CSKT Chairman Bud Moran asking that the Commission and the CSKT work with the Task Force to set up a series of public meetings focused on the compact negotiation. The first of the series of meetings would focus on background concerning the compact negotiations and the second series on specific compact proposals related to the meeting locality. Meetings should be proposed at Kalispell, Polson, Thompson Falls, Missoula, Hamilton, and Deer Lodge. The letter should propose background meetings in May and the second series after the draft compact is released.

Upper Clark Fork River Basin Steering Committee - Gerald Mueller passed out copies of his November 28, 2011 memorandum requesting the that Task Force include in its work plan for the coming biennium specific items related to the Upper Clark Fork River Basin Steering Committee and the upper Clark Fork River basin. The memorandum is included in Appendix 1 below. The Steering Committee approved the content of the memorandum at its November 22, 2011 meeting. Mr. Mueller also reported that a UM graduate student in the Environmental Studies Program is interested in some aspect of Goal 2, developing a flow plan for the upper Clark Fork basin, as a masters thesis topic.

Comment - The Task Force work plan for the coming two years should include only those items that might be completed during that period. I doubt that objectives 2B, 2C, and 2D of the Steering Committee's request would be completed in two years.

Question - How would the Steering Committee report to on its activities to the Task Force?

Answer by Gerald Mueller - Two members of the Task Force are also on the Steering Committee, Jim Dinsmore and Holly Franz. Also, under the Renewable Resources Grant and Loan Program grant that will fund the Task Force, the Task Force Coordinator will also coordinate the Steering Committee. The Steering Committee expects to meeting quarterly. Mr. Dinsmore, Ms. Franz, or the Coordinator could report quarterly on Steering Committee activities to the Task Force.

Comment - Summaries of the Steering Committee meetings might serve as the report to the Task Force.

Task Force Action - Those members of the Task Force present at this meeting agreed to include Goal 1 and Goal 2 Objective 2A of the Steering Committee request in its work plan for 2012-13.

Other Organizations - Harvey Hackett reported on behalf of the Bitterroot Irrigation District that the District continues to seek funding to replace its buried irrigation pipe.

Task Force Administration

Coordinator solicitation - Ann Schwend reported that she drafted a solicitation for the Coordinator position, working with the Task Force committee of Jim Dinsmore, Brianna Randall, Marc Spratt, and Ted Williams and also Caryn Miske. However, Ms. Schwend was recently told by DNRC personnel that the solicitation must be issued in the form of a formal request-for-proposals for the position. The issuance of the solicitation will therefore be delayed for a week or so while the RFP is drafted. The aforementioned Task Force committee and Maureen Connor, a Steering Committee member, will evaluate the solicitation responses, select and interview finalists, and make a recommendation to the full Task Force regarding an individual to select for the position. The solicitation will provide that the Task Force Coordinator is an independent contractor. DNRC intends to contract with Granite Conservation District to administer the Task Force funding provided through the RRGL grant. The contract may not be awarded until Coal Tax funds become available for the grant. DNRC will not know until January when the funds might be available.

Ground rules - The Task Force discussed the November 8, 2011 version of its ground rules that Mr. Mueller had previously circulated to Task Force members.

Task Force Action - After the discussion, those members of the Task Force present at this meeting agreed to the following changes to the November 8, 2011 version:

- ***Add a new subsection 2.2.B providing for termination of a member by the Task Force pursuant to the membership expectations set forth in 3.1.C.2.***
- ***Change references in the document to Task Force facilitator to Task Force coordinator.***
- ***In subsection 3.4.C change substitute an administrative committee for the fiscal committee.***
- ***Add a new subsection 3.5 providing for annual election of a Task Force chair with the responsibility to set meeting agendas and act as or designate a Task Force spokesperson.***

Organization - The Task Force discussed its focus, organization and relationship to DNRC. Highlights of the discussion follow.

Comment - As we consider Task Force organization, we might look to the Delaware Basin Commission. This Commission is funded by a tax. It works in multiple states and addresses fish and water quantity issues in both urban and rural settings. Someone from this Commission may be willing to come and discuss its operation with us for travel expenses.

Comment by Gerald Mueller - Prior to President Regan there were federally funded river basin commissions. President Regan terminated them. In the Missouri, the Missouri River Basin Association and now the Missouri River Basin Association of States and Tribes (MoRAST) succeed the Missouri River Basin Commission. Montana is a member of MoRAST. Upper and lower Missouri basin states have disagreed about the operation of the Missouri River during this past years flood operations.

Comment by Ann Schwend - The Network of Oregon Watershed Councils and the Oregon Association of Conservation Districts recently held a conference that I attended. Fifteen years ago, the Watershed Council was established in response to a potential Endangered Species Act listing of Coho salmon. This group successfully sought 15% of the state lottery proceeds to support its efforts and those funds are administered through the Oregon Watershed Enhancement Board. It would be very helpful if watershed groups in Montana had a similar watershed restoration fund to support their efforts.

Comment - Perhaps we might consider attempting to join with other groups in the Pacific Northwest states to create a council for the Columbia.

Comment - I would urge the Task Force to continue to focus on water quantity issues. During the last legislative session I worked with Water Resources Division Administrator Tim Davis on legislation creating the permitting exemption for geothermal wells. Mr. Davis acknowledged that a one-size-for-all approach is not appropriate for addressing water quantity issues in Montana. We should consider tailoring water rights to local geology. We need better information about ground water availability in the Clark Fork. We helped the Bureau of Mines and Geology get funding to set up the online data base about ground water wells.

Comment - We should consider electing a chair person who could sign agreements and set meeting agendas.

Task Force Action - Those members of the Task Force present at this meeting agreed to continue the organization discussion including consideration of electing a chair person at its next meeting.

Public Comment

There was no additional public comment.

Next Meeting

The next meeting is scheduled for 11:00 a.m. on Monday, January 23, 2012 in offices of the Mountain Water Company. The agenda will include the selection of the Task Force Coordinator, the Task Force scope of work for the RRGLP grant, finalization of the revision to the Task Force ground rules, and Task Force leadership and membership. Brianna Randall agreed to organize the meeting and send out meeting notices.

Appendix 1
Upper Clark Fork River Basin Steering Committee
C/O Gerald Mueller
440 Evans
Missoula, MT 59801
(406)543-0026

MEMORANDUM

Date: November 28, 2011
To: Clark Fork River Basin Task Force
From: Gerald Mueller
RE: Work Plan for the Upper Clark Fork River Basin Steering Committee

The Upper Clark Fork River Basin Steering Committee requests that the Task Force include the following in its work plan for the coming biennium.

Goal #1 - Fulfill the Steering Committee's legislative mandate set forth in **▲85-2-338 MCA**. (Please see attached statutory mandate).

Objective 1A - Provide a forum for all interests to communicate about water issues.

Task 1A1 - Convene Steering Committee meetings approximately quarterly through fiscal year 2012-2013 to provide the required forum.

Objective 1B - Provide education about water law and water management issues.

Task 1B1 - Conduct outreach and education regarding the State's proposal to settle the Confederated Salish and Kootenai Tribes' off-reservation water right claims in the upper Clark Fork.

Objective 1C - Identify short-term and long-term water management issues and problems and identify alternatives for resolving them.

Task 1C1 - Use Steering Committee meetings to identify water management issues and problems and alternatives for resolving them.

Task 1C2 - Monitor water supply and drought conditions in the basin.

Goal #2 - Develop a flow plan for the upper Clark Fork River basin that would identify target flows for the river mainstem and major tributaries in the upper basin, water sources to meet the targets, and specific actions necessary to secure the sources.

Objective 2A - Compile existing information on the following:

Task 2A1 - Mainstem and major tributary hydrographs;

Task 2A2 - Dewatered reaches of the upper Clark Fork River mainstem and major tributaries;

Task 2A3 - Existing water rights;

Task 2A4 - Fish flow needs;

Task 2A5 - Remediation and restoration needs;

Task 2A6 - Drought plans; and

Task 2A7 - Ongoing efforts to increase instream flow.

Objective 2B - Develop flow targets.

Objective 2C - Identify and evaluate potential water sources to meet flow targets.

Task 2C1 - Identify potential water sources from the from existing and increased water storage, increased water conveyance and use efficiency, ground water, and water right changes.

Task 2C2 - Evaluate the potential water sources.

Task 2C3 - Identify funding sources.

Objective 2D Develop a drought plan for the upper Clark Fork River basin that addresses the mainstem and major tributaries.

Objective 2E Provide for outreach to basin water interests in the development of the plan.

85-2-338. Upper Clark Fork River basin steering committee – membership and duties -- comprehensive management plan. (1) There is an Upper Clark Fork River basin steering committee. The steering committee has 22 members, who must be appointed as follows:

- (a) Each of the six conservation districts in the basin may appoint a member.
- (b) Each of the six county commissions in the basin may appoint a member.

(c) The department director shall appoint the remaining 10 committee members and any additional committee members not appointed under subsections (1)(a) and (1)(b) and shall ensure that committee membership includes a balance of affected basin interests and is in conformance with subsection (2).

(2) Steering committee members must be selected on the basis of their knowledge of water use, water management, fish, wildlife, recreation, water quality, and water conservation.

Representation on the committee must include but is not limited to representatives from affected:

- (a) agriculture;
- (b) conservation districts;
- (c) departments of state government;
- (d) environmental organizations;
- (e) industries;
- (f) local governments;
- (g) reservation applicants;
- (h) utilities; and
- (i) water users not otherwise represented.

(3) Except as provided in subsection (4), steering committee members shall serve 4-year terms and may serve more than one term.

(4) Initial term lengths must be staggered in conformance with the following:

- (a) conservation district appointees shall initially serve for 4 years;
- (b) county commissioner appointees shall initially serve for 2 years; and
- (c) as determined by the department, half of the department appointees shall initially serve for 2 years and the remainder shall initially serve for 4 years.

(5) The steering committee, consistent with the Upper Clark Fork River basin comprehensive management plan, shall:

(a) review the Upper Clark Fork River basin closure and exceptions as provided in 85-2-336 no less than every 5 years after April 14, 1995, and make recommendations to the legislature regarding necessary changes;

(b) prepare and submit a report evaluating the Upper Clark Fork River basin instream flow pilot program as provided in 85-2-439;

(c) prepare and submit a report concerning the relationship between surface water and ground water and the cumulative impacts of ground water withdrawals in each subbasin;

(d) provide a forum for all interests to communicate about water issues;

(e) provide education about water law and water management issues;

(f) identify short-term and long-term water management issues and problems and identify alternatives for resolving them;

(g) identify the potential beneficiaries of and a funding mechanism for new and expanded water storage sites;

(h) assist in facilitating the resolution of water-related disputes;

(i) provide coordination with other basin management and planning efforts;

(j) advise government agencies about water management and permitting activities;

(k) consult with local governments within the Upper Clark Fork River basin; and

(l) report periodically to the legislature.

History: En. Sec. 4, Ch. 741, L. 1991; amd. Sec. 3, Ch. 487, L. 1995; amd. Sec. 2, Ch. 353, L. 1997.

Appendix 2
Clark Fork River Basin Task Force
Ground Rules

1.0 Task Force Purpose

- 1.1 The purpose of the Clark Fork River Basin Task Force (Task Force) is to provide broad-based, knowledgeable citizen planning input to protect current water use and accommodate future water use consistent with its statutory mandate as set forth in 85-2-350(3) MCA.
- 1.2 In carrying out its purpose, the Task Force will:
- A. Identify short-term and long-term water management issues and problems, alternatives for resolving them, and the funding mechanisms necessary to do so;
 - B. Identify data gaps regarding basin water resources, especially ground water;
 - C. Coordinate water management by local basin watershed groups, water user organizations, and individual water users to ensure long-term sustainable water use;
 - D. Provide a forum for all interests to communicate about water issues;
 - E. Advise government agencies about water management and permitting activities in the Clark Fork River basin;
 - F. Consult with local and tribal governments within the Clark Fork River basin;
 - G. Make necessary recommendations to the Montana Department of Natural Resources and Conservation (DNRC) for consideration as amendments to the State Water Plan provided for under 85-1-203 MCA related to the Clark Fork River basin;
 - H. Recommend necessary and appropriate legislation concerning basin water issues to the Montana Legislature.
 - J. Report to:
 - 1. The DNRC on a periodic basis;
 - 2. The Environmental Quality Council annually; and
 - 3. The natural resources and commerce appropriations subcommittee each legislative session.

2.0 Members

- 2.1 As authorized by statute, the Task Force will designate its members to ensure that all watershed and viewpoints within the basin are adequately represented, including, but not limited to, representation from the following:
- A. Watersheds
 - 1. The reach of the Clark Fork River in Montana below its confluence with the Flathead River;
 - 2. The Flathead River basin, including Flathead Lake, from Flathead Lake to the confluence of the Flathead River and the Clark Fork River;
 - 3. The Flathead River basin upstream from Flathead Lake;
 - 4. The reach of the Clark Fork River between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River;
 - 5. The Bitterroot River basin as defined in 85-2-344 MCA; and

6. The upper Clark Fork River basin as defined in 85-2-335 MCA.

B. Viewpoints

1. Agriculture
2. Hydropower
3. Conservation/environment
4. Local government
5. Economic development
6. Residential water supply
7. Legislature (*ex-officio*)

2.2 Members shall be recommended by the Task Force membership committee and approved by the Task Force.

A. New members will be approved by the current members under process described in Section 4.0.

2.3 Pursuant to 85-2-350 (2) MCA, the Confederated Salish and Kootenai tribal government has the right to appoint a representative to the Task Force.

2.4 Task Force members serve 2-year terms and may serve more than one term.

3.0 Roles and Responsibilities

3.1 Member Responsibilities

A. Responsibilities to each other.

1. Each member agrees to candidly identify the interests he/she represents.
2. Each member agrees to listen carefully and respectfully to the other members and avoid interrupting other members.
3. Each member agrees to offer suggestions with respect and care.
4. Each member agrees to share relevant public information regarding the issues under consideration.
5. Each member agrees to communicate with each other directly, rather than through the news media.
6. Each member agrees to challenge ideas, not people.
7. Each member agrees to respect the decision of any member or stakeholder group to withdraw at any time and for any reason.
8. Each member or stakeholder group agrees to explain to the other members the reason for withdrawal from the process.
9. Each member agrees to educate and inform themselves on a wide range of issues under consideration by the Task Force and to consider and include the interest(s) of the group as a whole .and to consider and include the interest(s) of the group as a whole.

B. Responsibilities to constituents.

1. Each member agrees to:

- a. Inform and educate other people about the issues and options being addressed by the Task Force, as well as any recommendations that emerge from it.
 - b. Seek the input and advice of other people on the issues, options, and recommendations being considered by the Task Force.
 - c. The Task Force may want to develop a public communication and participation plan to further clarify how these provisions will be accomplished.
2. Each member agrees, where appropriate, to:
- a. Identify the interests of the constituents she/he represents.
 - b. Represent and speak for her/his constituents.
 - c. Explain and interpret the process and its proposed outcomes to his/her constituents.
 - d. Keep her/his constituents informed of the ideas and activities emerging from the process.
- C. Meeting attendance.
- 1. Members are expected to attend Task Force meetings regularly.
 - 2. Members who miss three meetings in a row without prior notification to the Task Force facilitator may be recommended for loss of membership status.
- D. Member Contact
- 1. Each member shall provide the Task Force with a means of contacting them within a 48 hour period. Where possible this shall include a current email address that is monitored daily.
 - 2. Each member shall be responsible for informing the Task Force of any changes in the contact information or when the member will be out of contact for a period of time.

3.2 Granite Conservation District

- A. The Granite Conservation District will serve as the fiscal agent for the project, reimbursing members for travel and expenses and otherwise managing the financial resources available to complete the project.
- B. Retain the services of the Task Force Coordinator, who will be chosen by the Task Force.

3.3 Role of the Coordinator

- A. Serve as an impartial facilitator during meetings.
- B. Enforce the ground rules agreed to by the members.
- C. Encourage everyone to participate and share their ideas.
- D. Help the group find mutual gain solutions;
- E. Coordinate pre- and post-meeting logistics;
- F. When necessary, communicate with the members between meetings.
- G. Respect the confidentiality of private communications with any of the members.
- H. Prepare and maintain an objective record of the public process, including areas of agreement, disagreement, and strategies for implementation.
- I. Prepare both draft and final documents, and when appropriate, research

reports.

J. Represent the Task Force when directed by it to do so.

K. Responsible for budget management and contract administration.

3.4 Committees

- A. The Task Force may want to create one or more advisory committees to:
 - 1. Provide technical information and resources.
 - 2. Seek the input and advice of individual watersheds or sub-basins.
 - 3. Seek the input and advice of public agencies and other officials that may be responsible for implementing recommendations that emerge from the Task Force.
- B. The Upper Clark Fork River Basin Steering Committee formed pursuant to 85-2-338 MCA is an advisory committee of the Task Force for upper Clark Fork River basin.
- C. Fiscal committee.

4.0 Decision-making Process

4.1 Decision-making Rule

- A. Each member is committed to seeking consensus defined as unanimous agreement among all of the members.
- B. In the process of seeking consensus, each member:
 - a. Has the right to disagree with any proposal. When a member disagrees, she/he agrees to explain the nature of the disagreement, and agrees to offer an alternative that seeks to accommodate her/his interest and the interests of others, if possible;
 - b. Is committed to supporting implementation of agreements that are reached; and
 - c. Will maintain his/her values and interests.

4.2 Fallback Decision-making Rule

If the Task Force cannot reach consensus, they agree to document the majority and minority viewpoints, including the results of secret ballots, if any, clarify the points of disagreement, present options on how the disagreements might be resolved, and move forward.

4.3 Decisions may be taken at meetings or through communication via member contact addresses (Section 3.1.D).

5.0 Media Relations and General Communication

5.1 Each member of the Task Force may speak to the media about his/her own views, but no member may speak on behalf of other members or the Task Force.

5.2 At the request of the Task Force, its Coordinator may periodically prepare press releases, which will be reviewed and approved by the Task Force or its designee before they are issued.

5.3. From time to time, the Task Force may ask its Coordinator to prepare fact sheets or issue briefs to help facilitate consistent communication among task force members and other people interested in water management in the Clark Fork River basin.

5.4. The Coordinator will serve as the official spokesperson for the Task Force.