

MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force (Task Force)
FROM: Gerald Mueller
SUBJECT: Summary of the December 8, 2008 Task Force Meeting
DATE: December 10, 2008

Participants

The following people participated in the Task Force meeting:

Task Force Members

Butch Hiller	Mountain Water Company
Fred Lurie	Blackfoot Challenge
Jim Dinsmore	Upper Clark Fork
Holly Franz	PPL Montana
Marc Spratt	Flathead Conservation District/Flathead Chamber of Commerce
Harvey Hackett	Bitterroot
Brianna Randall	Clark Fork Coalition
J. Gail Patton	Sanders County Commission

Ex Officio Members

Senator Verdell Jackson	Senate District 5
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Public

Dr. David Shively	University of Montana Department of Geography
Jacob Peterson-Perlman	UM Department of Geography
Mark Reller	Bonneville Power Administration (BPA)
Bill Foust	Water Management Division Manager, Confederated Salish and Kootenai Tribes (Tribes)

State and Federal Agency Personnel

Ann Schwenk	Montana Department of Natural Resources and Conservation (DNRC)
Ethan Mace	DNRC Missoula Water Resources Office
Bill Greiman	Montana Reserved Water Rights Compact Commission (Compact Commission)
Jay Weiner	Compact Commission/Attorney General's Office
Wendy Christensen	United States Bureau of Reclamation (USBOR)
Rick Vinton	USBOR

Staff:

Gerald Mueller	Consensus Associates
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Meeting Agenda

- November 3, 2008 Meeting Summary
- Updates
 - Task Force funding for FY 2010-2011
 - FY 2009 Conference Planning
 - Prior Appropriation paper printing
 - 2009 Water Legislation

- Bureau of Reclamation Cost Allocation Study
- Water Shortage Sharing Proposal for the Montana-CSKT Compact
- Water Supply Infrastructure
- Public Comment
- Next Meeting

November 3, 2008 Meeting Summary

The Task Force made no change to the November 3, 2008 meeting summary.

Updates

Task Force funding for FY 2010-2011 - Gerald Mueller reported that the Governor's Budget did not include funding for the Task Force. The 2007 legislature included Task Force funding in the DNRC budget in a one-time-only category. DNRC's initial budget request included the same funding for the 2010-2011 biennium. The Governor's Budget Office eliminated all one-time-only funding. Funding will therefore have to be added to the DNRC budget either through amending HB2 or through a separate bill. The Task Force has a statutory requirement to report to the subcommittee of the joint appropriation committee that addresses natural resources and commerce. Mr. Mueller passed out copies of a draft letter to the chairman of this subcommittee, and the Task Force discussed it. See Appendix 1. Mr. Mueller proposed a funding level of \$37,500 annually, which would be a 16% reduction from the \$45,000 appropriated for FY2009. He suggested that this annual amount include \$20,000 for coordinator salary and expenses, \$10,000 for one conference, \$3,500 for Task Force member mileage and meals and \$4,000 for publications and education. Mr. Mueller noted that winning approval of this budget will likely require support of Task Force members before the subcommittee.

Comment - Mr. Mueller should attempt to account for uncompensated time and mileage that Task Force members contribute to this effort.

Response - I will do so. It would help me, if those of you that do not request mileage reimbursement would let me know how many miles you drive.

Task Force Action - Those members of the Task Force present at this meeting approved the letter and budget amounts pending a DNRC review that \$3,500 would be adequate for Task Force member mileage and meals based on FY2008-2009 actual expenditures for these categories.

FY2009 Conference Planning - Gerald Mueller passed out copies of a table listing the watershed groups invited to participate in the May 6, 2009 round table. See Appendix 2. The purpose of the round table would be to allow the basin's watershed groups to discuss together their current and future activities. Watershed groups that responded that they plan to participate are noted on the table. Since Ms. Schwend has been hired and is acting as the DRNC liaison to the Task Force, Mr. Mueller will begin working with her on the technical conference in June 2009 that will focus on the conjunctive management of surface and ground water and will attempt to facilitate an exchange between DNRC and the technical community regarding ground water permitting under HB 831.

Task Force Action - Based on the positive watershed responses, those members of the Task Force present at this meeting the Task Force approved proceeding with the round table.

Prior Appropriation Paper Printing - Mr. Mueller reported that Martha Hodder had completed laying out the paper and was obtaining cost estimates to print it. Mr. Mueller passed around the final version of the paper.

Task Force Action - Those members of the Task Force present at this meeting directed that a list of its members and a short statement of its purpose and focus be added on the last blank page of the paper.

2009 Water Legislation - Mr. Mueller passed out a list of the introduced and requested water bills for the 2009 legislative session. See Appendix 3. Holly Franz and Mr. Mueller then discussed those bills for which language is available. Ms. Franz stated that because of the make up of the legislature, a Senate controlled by Republicans and a House evenly divided between the two parties with a Democratic Speaker, controversial bills are not likely to pass.

Five of the introduced bills, HB25, HB 39, HB40, SB17, SB22, and LC0431 are introduced at the request of the Water Policy Interim Committee and have been discussed at past Task Force meetings. HB25 allows an exemption from water right permit requirements for the Montana Department of Transportation for an appropriation to restore a functional wetland as required by the federal Clean Water Act. HB 39 changes the water right enforcement statutes by allowing the state attorney general to bring lawsuits to enforce water rights. HB40 would revise the water right permit process by requiring the DNRC to make a preliminary determination on a water right permit application and changing hearings from contested case to show cause hearings. SB17 would authorize local governing bodies to require public water and sewer systems for subdivisions with 30 or more lots sized at 3 acres or less. SB22 would create a permanent legislative water policy committee to study any issue related to water policy. LC0431 would provide \$4.2 million to the Montana Bureau of Mines and Geology for studying ground water in closed basins. LC0286, introduced at the request of the DNRC, would clarify groundwater utilization laws in closed basins by requiring mitigation plans for ground water developments that would have a net depletion of surface water rather than an adverse affect on an existing water right and would remove certain specific requirements for ground water applications from statute.

Bureau of Reclamation Cost Allocation Study

Wendy Christensen, Technical Projects Officer in the BOR Yakima office, provided a diagram of the BOR process leading to a contract with the state for water stored in Hungry Horse reservoir. See Appendix 4. The BOR anticipates that the cost reallocation study would be completed by the end of 2009. An environmental impact study would be conducted beginning in July 2011. A contract may be available by 2014. Ms. Christensen and Rick Vinton, Manager of the BOR Economic and Resource Planning Group in Denver, will be meeting tomorrow with DNRC staff in Helena. Mr. Vinton provided an overview of the cost allocation study using the handout contained below in Appendix 5 and answered questions from meeting participants. Mr. Vinton stated that the benefits and costs considered in the cost reallocation study are assessed from a national economic development rather than a regional or local perspective. How the Hungry Horse project will be operated given the state's request for 100,000 acre feet of additional consumption for municipal and industrial uses and where and when the water would be delivered must be addressed by the hydrologic studies as input to the cost reallocation analysis. Highlights of the meeting participant questions and responses by Mr. Vinton and Ms. Christensen follow.

Question - Will the cost reallocation study place a value on flows provided for environmental requirements?

Answer- The value of flows to enhance the fishery and other environmental attributes is difficult to quantify. Fishery impacts are an issue of biology not economics.

Question - Will the cost reallocation study include the value of recreation?

Answer - The value of recreation is sometimes assessed using a willingness to pay methodology.

Question - Is recreation a current project purpose that is allocated costs?

Answer - Recreation is not now allocated costs. Hungry Horse is a part of the Federal Columbia River Power System (FCRPS). From a preliminary perspective, the state's request of 100,000 acre feet of additional consumption would not appear to have much of an impact on the operation of the FCRPS.

Question - You said that costs considered will include the original project costs plus operation and maintenance costs and that costs will be adjusted to 1960 values. How will this adjustment be made?

Answer - Costs will be deflated using an index similar to the Consumer Price Index. Project benefits will be valued at today's dollars. Costs and benefits must be adjusted to a common basis so they can be allocated equitably among the project beneficiaries.

Question - Will the cost reallocation studies address requirements for endangered species?

Answer - If we are considering impacts on salmon production, we can factor in increased salmon production and increased salmon harvest, and assign a value to the increased harvest. Addressing endangered species value is more difficult. One method may be to survey what people are willing to pay to maintain an endangered species such as bull trout.

Question - Will you attempt to value the benefits of required mitigation measures for endangered species?

Answer - No, we will not because mitigation measures are not an economics issue. The cost of mitigation measures will be included. Some costs will be reimbursable and some will not.

Question - How will the costs of the selective withdrawal structure and the generation rewinds at Hungry Horse dam be addressed?

Answer - The costs and benefits for specific uses such as the fishery and power production will be assigned to those uses.

Question - You said that currently the only project purposes assigned costs are flood control and power production. Will the cost reallocation analysis consider all project beneficiaries?

Answer - Yes, all project beneficiaries will be considered in the reallocation.

Question - Will Hungry Horse water allocated through a reserved water rights compact with the Confederated Salish and Kootenai Tribes (CSKT) be subject to a process similar to the contracting process?

Answer - No, water right settlements are non-reimbursable costs and do not follow the cost reallocation and environmental impact processes.

Question - Does the allocation of costs to non-reimbursable purposes reduce the costs to reimbursable purposes?

Answer - Yes, because costs are spread among more beneficiaries. Water provided for endangered species requirements or tribal water rights purposes may, however, reduce the amount of water available for contracting.

Question - Must the CSKT reserved water rights be determined before a reallocation of Hungry Horse costs can be carried out?

Answer - No.

Question - Will this process end up by placing a cost for a gallon of water from Hungry Horse?

Answer - We have asked the state if they want us to determine the cost of an acre foot of water before we go to the time and expense of an environmental impact study. The capital and operation and maintenance costs can be put into a rate for the water.

Comment - I agree that the state's request for 100,000 acre feet of water is small compared to the average annual flow of the Clark Fork River of 19 million acre feet.

Question - Will alternative cost reallocations be considered in the environmental impact study?

Answer - No, only one reallocation will be considered in the environmental impact study.

Question - Will you consider adding splash boards to the dam to raise the reservoir elevation by a foot?

Answer - This alternative is up to the management of the dam operation.

Question - Do you have the raw data you need for the cost reallocation analysis?

Answer - No, I do not. We need information from the state about where and when and by what use the additional water from Hungry Horse would be released and consumed.

Water Shortage Sharing Proposal for the Montana-CSKT Compact

Jay Weiner, a Compact Commission attorney and Assistant Attorney General, and Bill Greiman, a Compact Commission Agricultural Engineer, presented the methodology under consideration in the compact negotiations by which shortages would be shared between existing water uses and instream flows. The sharing is based on the joint objective of both the state and the CSKT of protecting existing users while allocating water for tribal rights. The sharing methodology involves two hydrographs for reservation streams. One, the Level 1 hydrograph, is developed from stream gauging data, i.e., actual stream flow measurements. The Level 1 hydrograph incorporates existing water uses. Average daily data including the peak flow amount and date and the average annual volume at a specific stream gauging station are used to construct a hydrograph to represent a specific location on a stream. Given forecasts of the peak run off date and total volume, this curve, called the Level 1 hydrograph, can then be used to manage water withdrawals to maintain average historic instream flow conditions, thereby sharing any shortage between existing uses and instream flow. The Level 2 hydrograph would go beyond historic data by incorporating CSKT goals for water use and instream flow. The Level 2 curve may be constructed from water conveyance or use efficiency improvements. Implementation of the Level 2 hydrographs would still require ensuring protections for existing water users.

Question - Another technique for determining a target for instream flow is the "wettered perimeter" method. Do you prefer to use the Level 1 hydrograph for reservation streams?

Answer - Yes. We think that we have better data for the Level 1 curves than for the wetted perimeter measurements in this case.

Comment by Bill Foust - In 1989, the Tribes reached an agreement with the Natural Resources Conservation Service (NRCS) to upgrade the Snowtel data collection which is used to make run off forecasts. Some sites have been upgraded to provide real time data available over the internet.

We also intend to improve the forecasts through ground truths in which the forecasts are compared with actual run off data.

Question - Will the Level 1 and Level 2 hydrographs be included in the compact?

Answer - We intend to include them in some form, either in principal or perhaps in detailed appendices.

Question - Has this hydrograph technique been used before in other places?

Answer - No.

Comment - This technique might be used in other areas of the basin to share water between instream flow and existing diversionary uses.

Water Supply Infrastructure

Harvey Hackett introduced this topic. The Bitterroot Irrigation District (BID) needs to replace a siphon including two pipes. The cost of this project would be in the \$12 -15 million dollar range. Representatives of the BID and the Daily Ditches Company recently met in Helena with representatives of the governor's office, state agencies, the NRCS, and Montana Congressional delegation seeking a means to fund this project. No funding mechanism currently exists. As is explained in Brian Shovers' paper "Diversion, Ditches, and District Courts, Montana's Struggle to Allocate Water" (*Montana, The Magazine of Western History*, Spring 2005, published by the Montana Historical Society), entrepreneurs developed Montana natural resources before a central state authority was organized. These entrepreneurs resisted a centralized authority. As result, no state agency has the authority or expertise to take on such a project. In the past the USBOR had this expertise, but it has been eroding away with retirements and management changes. Unlike many of our surrounding states, Montana does not have a state engineer. Montana's natural resource agencies have been run by political appointees rather than engineering or technical experts.

Question - The incoming Obama Administration may include water infrastructure projects in an economic stimulus package. Have you prepared a wish list of projects that might be included in such legislation?

Answer - The Bitterroot Irrigation Project does not have a list.

Question - Is there a list of dams needing repair to assure their safety?

Answer by Mike McLane - There is a list of such projects. Funds are awarded on a competitive basis. The source of funds is electricity generation revenue from the state-owned Toston Dam generation project. The Ruby Dam project needs repair and the costs are estimated at \$12 million. Because it was a one-time funding request, the Budget Office removed \$8 million from the governor's budget for this project.

Comment - The Task Force should consider sending a letter to Senator Baucus asking that any federal economic stimulus package include irrigation and water supply projects in addition to roads and bridges.

Comment - The status of the state's irrigation and water supply infrastructure may be a topic for the state water planning process.

Comment by Bill Greiman - The last legislature authorized DRNC to conduct a \$100,000 study of the status of state irrigation projects.

Comment - The GAO recently conducted a study of Indian irrigation projects that identified a funding need to repair/improve them. A CSKT-State compact will also need funding, but it would probably not be ready in time to include in a federal economic stimulus project.

Comment - Funds for irrigation projects have been made available in the past through the federal farm bill.

Task Force Action - Those members of the Task Force present at this meeting agreed to direct Mr. Mueller to write a letter on behalf of the Task Force to Senator Baucus and Governor Schweitzer asking that a federal economic stimulus package include funding for irrigation and water supply projects. Information from the DNRC irrigation study should be included, if it is available.

Public Comment

There was no additional public comment.

Next Meeting

The next meeting is scheduled for 9:30 a.m. on Monday, January 12, 2009 at a location in Helena to be announced. The agenda will include the Hungry Horse water contract, 2009 water legislation, and Task Force funding.