Upper Clark Fork River Basin Steering Committee
Meeting Summary
February 7, 2006

Introductions
Gerald Mueller and members of the Upper Clark Fork River Basin Steering Committee (Steering Committee) introduced themselves. A list of the members in attendance is attached below as Appendix 1.

Agenda
- Review of the January 25, 2006 Meeting Summary
- Basin Water Supply Update
- Post-Adjudication Issue Paper
- Adjudication Survey
- Report on the DNRC Surface and Ground Water Interaction Task Force
- TMDL Program Update
- Public Comment

January 25, 2006 Meeting Summary
The Steering Committee made no changes to the meeting summary.

Upper Clark Fork River Basin Water Supply Update
Mike McLane presented a Power Point presentation summarizing the current basin water supply using NRCS Climate Center data. Mountain snow pack is normal to above normal basin wide. The reported snow water equivalents in the basin ranging from 68% at Copper Camp in the Blackfoot to 143% at Basin Creek in the Butte area. As of January 6, the total precipitation was 96% and the snow water equivalent was 98% of the basin average. Since October 1, 2005, the beginning of the current water year, flows in the Blackfoot River have generally been below average, perhaps because of the effects of last year's drought. Over the same period, flows in the Clark Fork River near Drummond have been near average. Mr. McLane concluded that the water year has started out well, but the precipitation and temperature over the next 45 days will determine the basin water supply this summer.

Post-Adjudication Issue Paper
The Steering Committee reviewed and approved the September 2005 draft of "How Will Completion of the AdjudicationAffect Water Management in Montana?" with one change. Mike McLane asked that language be added describing the steps in the Wyoming water rights process beginning with the filing of a permit for a water right and ending with an up-to-date or "living" water rights decrees. The Steering Committee also decided that the paper should be provided to the following list:
- The Environmental Quality Council;
- The Montana House of Representatives and Senate Natural Resource Committees;
- The Montana Water Court;
- The district court judges assigned the responsibility for overseeing water administration in Montana;
- DNRC;

- Water commissioners (through the annual DNRC water commissioner training);
- Montana's conservation districts;
- Montana watershed groups;
- Water user associations;
- The Montana Water Resources Association;
- The Western Governors' Association; and
- The Western States' Water Council.

Adjudication Survey

The Steering Committee reviewed the draft adjudication survey document included below in Appendix 2. The Steering Committee agreed to the following changes to the Appendix 2 document:

- The background should be shortened and the remaining material about the adjudication and the Steering Committee moved to a separate page after the survey.
- The second survey question should dropped and replaced with a multiple choice question about the water uses supported by the water rights of the person completing the survey.
- At the end of the fourth survey question, add the words "in the adjudication process."
- In the fifth survey question, drop reference to temporary or preliminary decrees and add at the end "in the current statewide adjudication proceeding."
- Add a line separating the adjudication questions from those addressing the enforcement of water rights.

The Steering Committee then agreed to the following next steps. Mr. Mueller will revise the document pursuant to the changes above and circulate the revision to Bob Benson, Jim Dinsmore, and Dan Ueland for their approval. Mr. Mueller will also identify a date and a place for a public meeting about the survey in the Flint Creek and Blackfoot sub-basins. Mr. Mueller will also work with Mike Mclane to obtain mailing information for the water rights holders in the two sub-basins, so that the survey can be mailed out in mid-February.

DNRC Surface and Ground Water Interaction Work Group

Using a Power Point presentation, Mike McLane reported on the Surface/Ground Water Work Group created by Mary Sexton to seek agreement on proposed actions related to surface and ground water interactions. Members of the Work Group include representatives of the following organizations:

Montana Building Association
Montana Association of Realtors
Montana Water Resources Assn.
Trout Unlimited
Montana Stockgrowers Association
Montana Rural Water
Montana Farm Bureau
Gallatin Irrigators
Montana Assoc. of Conservation Districts
DFWP
MDT Wetlands
PPL Montana
Montanans for Smart Growth
Montana Bureau Mines & Geology
Friends of Wild Swan
Montana DEQ, Subdivisions
DNRC, Chief Legal Counsel
DNRC, Water Resources Division Administrator
DNRC, Water Rights Bureau Chief

Several basins in Montana have been closed to most new surface water rights, including the Bitterroot, Madison/Jefferson River Basin, Teton, Upper Clark Fork Basin, and Upper Missouri.

Ground water is open to appropriation in closed basins. Under these closures, one can apply for a new ground water right as long as the ground water is either only weakly or unconnected to surface water.

The Work Group has identified four major concerns: protecting senior surface water rights; administering surface and ground water rights under a common listing of priorities; appropriating ground water in closed basins; and the increasing use of permit exemptions. It is considering proposals related to four areas:

Appropriation of Ground water in Closed Basins

- Ground Water should remain open to appropriation.
- Eliminate "substantially connected" and "immediate or direct" language.
- Recognize as a matter of policy that ground water appropriations have a consumptive impact on surface water.
- Mitigate depletions to surface water.
- Require a hydrologic report for every new ground water permit application.

Augmentation

- Augmentation must be defined.
- A tool to mitigate adverse affect.
- An action that would increase the legal water supply.
- Ground Water Augmentation should:
  - Mitigate for all " adverse effects;"
  - Mitigate surface water depletions by new use;
  - Address amount, location, & timing of surface water replacement; and
  - Ensure mitigation to surface water occurs in the "affected reach."

Changes to Closed Basin Statutes

- Eliminate ambiguous language ("substantially connected" and "immediate or direct").
- Maintain existing exemptions for new surface water rights used for:
  - Livestock;
  - Municipalities; and
  - Existing storage exemptions of high spring flows.
- Eliminate exemption for:
  - New surface water domestic or multiple domestic water supply; and
  - "Non-consumptive" uses.
- Add exemption for statutorily required wetland and stream mitigation projects.

Exemptions to Permit Process

- Maintain existing ground water exemptions:
  - Stock water wells and springs;
  - Stock water pits and ponds under 15 acre-feet in size; and
  - Ground water well (no springs) for domestic uses.
- Eliminate exemptions for:
  - A broad range of miscellaneous uses, including alluvial pit ponds, wells to fill ponds, commercial uses, etc.; and
  - A water right acquired through the permit process.

- Create a new administrative process for subdivisions:
  - 25-35 gpm wells, 2 acre feet per year, for only domestic and a small yard and only 1 well per lot; and
  - Augmentation required to replace surface water depletions.

In the discussion that followed, members of the Steering Committee made the following points:

- The DEQ requires developers to demonstrate that a new subdivision would have water physically but not legally available.
- Subdivisions based on exempt wells avoid demonstrating that they would have no adverse affects on other water right holders.
- Except for the $10 per year adjudication fee, exempt rural domestic wells to not contribute towards the administration or protection of the ground water resource.

TMDL Program Update

Jim Bond, a Water Quality Specialist with the Montana Department of Environmental Quality, provided an explanation and update on the Total Maximum Daily Load (TMDL) program using the handouts included in Appendix 3. A TMDL must be written for streams impaired by pollutants (sediment, nutrients, metals, and temperature) but not for pollution (habitat degradation and dewatering). DEQ is currently scheduled to complete TMDLs for the impaired streams on the 303 (d) list (see the table and map in Appendix 3) in the upper Clark Fork River basin by the end of 2008. Under a court decree, all TMDLs in the state must be completed by 2012.

Member Question - Is the funding available to finish?
Answer - We have estimated that $350-$400 thousand will be necessary to complete the work in the upper Clark Fork. Funding comes from a variety of mostly federal sources. We do not know if sufficient funding will continue to be available.

Member Question - Can we miss the 2012 completion deadline?
Answer - No.

Member Question - What is the role of the Watershed Restoration Council (WRC) in TMDL development?
Answer - They are collecting data, assisting with land access and communication with landowners, and identifying problems and developing plans to address them. Implementation of TMDLs is voluntary; involvement of local landowners makes implementation more likely.

Member Question - Are you prioritizing stream segments for TMDL development?
Answer - After we collect the data necessary to characterize them, we will prioritize them.

Member Question - Is there a source of funding for implementing the plans?
Answer - Funds may be available from DEQ or NRCS grants. If grant funds are not available, we will seek voluntary contributions.

Member Question - There are two streams on the 303(d) list you handed out that are impaired only by flow, Tin Cup Joe Creek and Antelope Creek. Why are these on the list since dewatering is pollution and does not require a TMDL?

Answer - I did not participate in the development of the 303(d) list, and I am not sure why these streams are on the list.

Member Question - How are TMDLs being integrated with the Superfund?
Answer - I am not sure. I assume that the remediation planning and activities will be coordinated with TMDL development.

Member Question - How will you address temperature in developing TMDLs?
Answer - We will look for the causes of the temperature problems such as lack of shade and stream braiding and in cooperation with landowners will consider options for addressing them.

Public Comment

There was no public comment.

Next Meeting

The next meeting was scheduled for Tuesday, March 21, 2006. The agenda will include:

- An update on the adjudication survey;
- Continued discussion of the ground water-surface water issues; and
- Report on the status of upper Clark Fork water story.

Appendix 1

Steering Committee Member, Staff and Public Attendance List
February 7, 2006

Members	Group/Organization Represented
Bob Bushnell	Lewis & Clark Conservation District
Brett Mannix	North Powell Conservation District
Jim Quigly	Little Blackfoot River
Jim Dinsmore	Granite Conservation District
Bob Benson	Clark Fork Coalition
Jon Sesso	Butte Silverbow
Dan Ueland	Mile High Conservation District
Staff	
Mike McLane	DNRC
Gerald Mueller	Facilitator
Guest	
Jim Bond	Montana Department of Environmental Quality

Appendix 2
Adjudication Survey
February 7, 2006

Background

The enclosed survey is being conducted by the Upper Clark Fork River Basin Steering Committee which is a basin water management group established pursuant to state law. The Steering Committee is not an agency of state government and has no regulatory authority. Members of the Steering Committee are appointed by the basin's six county commissions and six conservation districts and the Director of the Department of Natural Resources and Conservation. Members include representatives of basin farmers and ranchers, environmental/recreation organizations, industries, hydropower utilities, and state agencies. A list of current Steering Committee members is on the back of this sheet.

In December 1994, the Steering Committee adopted and presented to Montana's governor and legislature the *Upper Clark Fork River Basin Water Management Plan.* The purpose of the Steering Committee is to implement this plan and amend it as necessary consistent with its statutory authority (see §85-2-338 MCA). The Steering Committee intends all of its actions to take into full account the law of prior appropriation.

In 1979, the Montana Legislature passed a statute requiring the adjudication of all pre-1973 water rights. Prior to this date, the State had no written record of most water rights. The adjudication began in 1982 with individuals filing their water rights claims. By 2005, no final water right decrees have been issued by the Montana Water Court which was established to conduct the adjudication. The 2005 Legislature required water rights holders to pay a fee, which for most holders is $10 per year per water right per year, to fund completion of the adjudication process by 2020.

Because of its commitments to the first-in-time, first-in-right water rights system, the Steering Committee has a long-standing interest in the adjudication process. In March 2004, the Steering Committee issued a policy paper entitled "White Paper on the Montana Water Rights Adjudication." The paper concluded:

> Without a complete and accurate state-wide water rights adjudication, the status of Montanan's water rights is uncertain. This uncertainty threatens the livelihoods of farmers and ranchers, the viability of water dependent industries, the value and marketability of real property, and the health of fisheries and aquatic ecosystems.

The paper also found that the most critical problem with the adjudication is the slow pace at which it is producing accurate and enforceable decrees. Given the then current funding and staffing resources for the Montana Water Court and the DNRC, the adjudication would not likely have beeen finalized for another 25 to 50 years. While the Steering Committee did support the 2005 Legislature's action to provide more resources to hasten completion of the adjudication, it took no position on the means of raising the additional funding.

In January 2006, the Steering Committee issued a second paper entitled "How Will Completion of the Adjudication Affect Water Management in Montana?" The paper found that completion of the adjudication may result in fundamental changes to water rights enforcement, water administration and water management. The Steering Committee is interested in ensuring that water users, water managers, and policy makers consider these changes and their implications so that appropriate responses to them can be identified, discussed and put in place before the final water rights decrees are issued.

This survey is being conducted in an attempt to hear from water rights holders about their experience with the adjudication process and their expectations after this process is completed. Water users in two sub-basins of the Blackfoot are being survey, the Blackfoot and Flint Creek. The Blackfoot was chosen because it does not have water rights decrees and the Flint Creek because it has historic decrees.

Copies of the two Steering Committee papers are available at http://water.montana.edu/watersheds and at your local conservation district office. Questions about this survey can be addressed to Steering Committee facilitator, Gerald Mueller, at 543-0026.

Appendix 2 Continued

Steering Committee Membership List

When it authorized the creation of the Steering Committee in 1991, the Legislature directed that members of the Steering Committee be appointed by the DNRC Director. In 1997, at the request of the Steering Committee, the Legislature provided that a majority of its members be appointed by units of basin local governments. Six members are to be appointed by the basin's six county commissions and six by the basin's six conservation districts. Ten members would continue to be appointed by the DNRC Director to assure balanced representation of the basin's water interests. Current members are listed in the following table:

Name	Telephone Number	Area or Organization Represented	Appointed Entity
Bob Benson	549-1426	Clark Fork-Pend Oreille Coalition	DNRC Director
Stan Bradshaw	449-9922	Trout Unlimited	DNRC Director
Robin Bullock	782-9964 X1814	ARCO	DNRC Director
Bob Bushnell	362-4629	Lincoln Area Rancher	Lewis and Clark Conservation District
Jim Dinsmore	288-3393	Hall Rancher	Granite Conservation District
Holly Franz	442-0005	PPL Montana	DNRC Director
Carol Fox	444-0209	Natural Resource Damage Program	DNRC Director
Steve Fry	509-495-4084	Avista Corporation	DNRC Director
Eugene Manley	288-3409	Granite County & Montana Water Resources Association	Granite County Commission
Brent Mannix	793-5857	Big Blackfoot Rancher	North Powell Conservation District
Jim C. Quigley	492-6542	Little Blackfoot Rancher	DNRC Director
Pat Saffel	542-5500	DFWP	DNRC Director
John Sesso	723-8262	Butte/Silver Bow Planner and Member Montana House of Representatives	Butte/Silver Bow Commission
Dan Ueland	728-9916	Silverbow Rancher	Mile High Conservation District
Jules Waber	846-3680 X32	Powell County Superintendent of Schools	Powell County Commission

Appendix 2 Continued
Survey Questions

Note that your response to this survey will be kept confidential. Only a summary of the results of all surveys will be reported and retained. Individual responses will be destroyed after the summary is completed.

Name: _____ (Optional)

Q: Do you hold a pre-1973 water right from the State of Montana?

Q: For each pre-1973 water right, what is its priority date and purpose of use?

Q: Have you or your representative participated in the statewide adjudication of water rights? If so, how have you participated?

Q: What is the estimated cost of your participation cost in time and dollars?

Q: What is the status of your pre-1973 water right, i.e., is it included in a temporary or preliminary water rights decree issued by the Montana Water Court?

Q: On a scale of 1 to 10 with 1 meaning very dissatisfied and 10 meaning extremely satisfied, how would you rank the adjudication process?

Q: Do you expect that completion of the adjudication will make your use of water easier or harder or have no affect?

Q: How will completion of the adjudication affect your use of water?

Q: Is your water right regularly administered by a water commissioner?

Q: The cost of a water commissioner is now borne proportionately by those water rights holders who receive water pursuant to the commissioner's actions. Would you support requiring all water rights holders in the decree that the commissioner is enforcing to help pay for the commissioner?

Q: Do you expect that enforcing your water right(s) will be easier or harder after the adjudication process is completed? Why or why not?

Q: Should the DNRC be more active in enforcing water rights?

Q: About how much time and money have you spent defending your water rights?

Q: Do you feel that your water right is threatened by interests in Montana? By interests in downstream states?

Q: Do you have any other comments or concerns about the adjudication process or how water rights are currently administered?

Q: Would you like to receive a summary of the results of this survey? If so, please list your name and mailing address.

Appendix 3

What is a TMDL?

At its most basic definition, a TMDL stands br Total Maximum Daily Load, or the maximum amount of a particular pollutant that a waterbody can receive and still meet water quality standards. State standards include the designated uses by a waterbody, and numeric and narrative criteria for pollutants.

However, the TMDL as it really means to yon and I (sic) encompasses much more. The TMDL is part of the Watershed Management Plan that develops strategies to ensure that a particular waterbody or waterbodies within a watershed are of suitable quality to protect beneficial uses as described in Montana's water quality standards.

Why TMDLs?

The Federal Clean Water Act necessitates that each state develop designated uses for all their waters, and standard to protect those uses. Any waters of the State are then assessed to see if they meet those uses. An waters that arc not of suitable quality to meet its designated uses are identified on the suite's 303(d) list, which documents the pollutants and likely sources that are causing impairment. Waterbodies that appear on the 303(d) list must be addressed through the TMDL program - most requiring development of a TMDL, typically within the context of a Water Quality Restoration Plan. A TMDL is written for each pollutant-waterbody combination for an impaired waterbody.

The goal of the TMDL program is to develop implementable Water Quality Restoration plans that use sound science and reasonable action to attain water quality that supports all of the uses br a particular waterbody.

Beneficial Uses include: Cold Water Fishery/Warm Water Fishery, Other Aquatic Life, Drinking Water, Recreation, Agricultural Use, and Industrial Use

Components of Water Quality Restoration Plan:

- Watershed Characterization - Baseline information to put the watershed into context
- Source Assessments - Identify where the pollutants are coming from
- Targets - Representation of the standards. These are measurable targets linked to the protection of the beneficial uses. A pollutant type can have multiple targets.
- Water Quality Impairment Review - Review currently available data to assess impairment. Summarize results and compare to targets to better define the problem.
- TMDL - This is the pollutant loading conditions necessary to meet the target(s). Targets can he achieved through % load reductions, or a loading capacity in lbs/day.
- Allocation - Distribution of the TMDL through land use, activity, geographic area, or performance based.
- Monitoring Strategy - Strategy to assess water quality to ensure the plan is effective.
- Restoration Strategy - The on-the-ground actions that should be taken to help meet the TMDL.

2004 Upper Clark Fork Listings

		Sedimen	Nutrients	Temperatu	Metals	Habitat	Flow
Clark Fork River	Little Blackfoot to Cottonwood Creek	x	x		x	x	x
Clark Fork River	Cottonwood Creek to Warm Springs Creek	x	x		x	x	x
Warm Springs Cre	headwaters to Meyers Dam	x				x	
Warm Springs Cre	Meyers Dam to mouth Clark Fork				x	x	x
Cable Creek		x	x			x	
Storm Lake Creek		x	x			x	x
Mill Creek	section line between Sec. 27 & 28 T4N, R11 to mouth Silver Bow				x		
Mill Creek	headwaters to section line between Sec. 27 & 28 T4N, R11				x	x	x
Willow Creek	headwaters to T4N, R10W, S30	x	x		x	x	
Willow Creek	T4N, R10W, S30 to mouth Silver Bow Creek				x	x	x
Lost Creek	south State Park boundry to mouth Clark Fork		x		x	x	x
Modesty Creek					x		x
Racetrack Creek	National Forest Boundry to mouth Clark Fork					x	x
Dempsey Creek	National Forest Boundry to mouth Clark Fork	x	x			x	x
Tin Cup Joe Creek	Tin Cup Lake to mouth Clark Fork						x
Mill-Willow Bypass	Silver Bow Creek to Clark Fork				x		
Peterson Creek	headwaters to Jack Creek	x	x		x	x	x
Peterson Creek	Jack Creek to mouth Clark Fork			x		x	x
Antelope Creek	headwaters to mouth Gardiner Ditch						x
Silver Bow Creek	Warm Springs Pond 2 to outlet	x	x		x	x	
German Gulch	headwaters to mouth Silver Bow Creek				x		
Beefstraight Creek	Minnesota Gulch to mouth German Gulch				x		
Dunkleberg Creek	headwaters to SW corner Sec2, T9N, R12W				x	x	
Dunkleberg Creek	SW corner Sec2, T9N, R12W to mouth Clark Fork		x		x	x	
Hoover Creek	headwaters to Miller Lake	x					
Hoover Creek	Miller Lake to mouth Clark Fork		x			x	x
Gold Creek	headwaters to National Forest boundry				x	x	
Gold Creek	National Forest Boundry to mouth Clark Fork		x				x
Brock Creek		x					
Warm Springs Cre	(near Phosphate) headwaters to line between R9W and R10W	x				x	
Warm Springs Cre	(near Phosphate) line between R9W and R10W to mouth Clark Fork	x				x	x

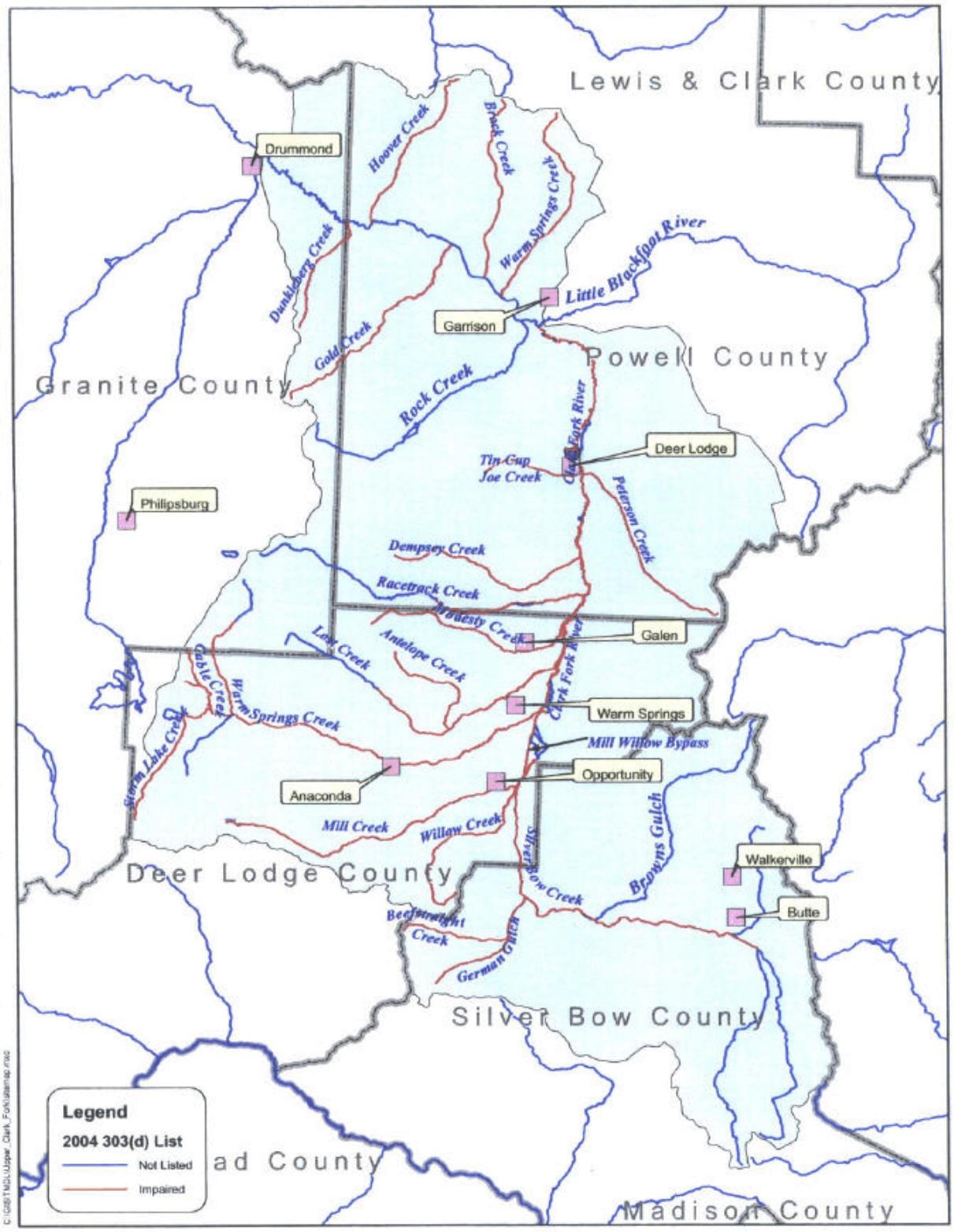

Figure 1-1

Site Base Map and Impaired Water Bodies
Upper Clark Fork River TPA

5 2.5 0 5 Miles

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