

02-22-07 Citizen Coordinating Council Meeting--DRAFT

Post Falls Library, 6:00 PM to 8:00 PM, Post Falls, Idaho

Attendees (who signed in and/or announced themselves)

Mike Beckwith

Mike Mihelich

Jerry Boyd

Ed Moreen

Jack Domit

Glen Rothrock

Dave Enos

Luke Russell

Terry Harwood

Rusty Sheppard

Dennis Hinrichsen

Rob Spafford

Woody McEvers

Mark Stromberg

Meeting Overview

The February 22, 2007 meeting of the Citizen Coordinating Council (CCC) of the Basin Environmental Improvement Project Commission (Basin Commission) covered the following topics:

1. Overview of “Assessment Report on Prospects for Mediated Negotiation of a Lake Management Plan for Lake Coeur d’Alene”
2. Basin Repositories
3. Contaminant Management PFT
4. Basin Updates (2006 Accomplishments Report, Clean Water Act Project Status, Infrastructure and Flood Study, CCC Elections)

As approved by CCC Chair John Snider, Jerry Boyd chaired the meeting in John’s absence.

Overview of “Assessment Report on Prospects for Mediated Negotiation of a Lake Management Plan for Lake Coeur d’Alene”

Mike Beckwith from the Coeur d’Alene Tribe and Glen Rothrock from Idaho DEQ provided a status update on the Lake Management Plan mediation process, including how the recently released assessment report fit into the overall mediation process. Mike emphasized that the mediation was a formal legal process between three sovereign entities (the Coeur d’Alene Tribe, the State of Idaho represented by DEQ, and the U.S. government represented by EPA) under the auspices of the federal Alternative Dispute Resolution Act and according to an MOA signed by the three parties. He noted that the process to date has focused on assessing the feasibility of mediating the dispute (Phase I of the process). The next step will be to discuss the findings of the assessment report and come to agreement among the parties about the “roadmap” for conducting the actual mediated negotiation. (The actual mediated negotiation is Phase II of the process). There was some discussion at the meeting about whether the process was “still in Phase I” or “between Phase I and Phase II,” but it was clear that the State and Tribe had not yet sat down to discuss the assessment report and the options for proceeding with the mediated negotiation. Mike and Glen provided hard copies of the report, which is also available at

www.basincommission.com and www.ecr.gov/s_publications.htm as well as EPA's Coeur d'Alene cleanup site. Glen noted that there was an article in the February 22, 2007 Coeur d'Alene Press about the assessment report and that it was a good summary of the report and previous lake management plan development efforts.

The assessment report provided a number of options for how to conduct Phase II, including who the principal negotiators should be and how stakeholders should be involved. In the report, the mediator, Michael Harty, recommended an approach in which "the State, Tribe, and EPA, as jurisdictional stakeholders, are the primary negotiators" while also acknowledging that "there is a requirement for direct dialogue with other stakeholders...based on specific LMP issues and respect for jurisdiction...[and] there is a requirement for consistent reporting back to other stakeholders to promote transparency and understanding." Mike Beckwith emphasized that there will be "appropriate involvement at the appropriate time" for stakeholders. However, he said, it is currently time for the Tribe, State, and EPA to come to agreement on how to conduct the negotiation, and this process is necessarily confidential.

Mike and Glen said that the Tribe and State are also moving forward with developing an approach for Lake monitoring that would provide continuity with the earlier U.S. Geological Survey effort, which was discontinued in September 2006. The Tribe and State have submitted a plan to EPA for the monitoring (officially a "Quality Assurance Project Plan"). Terry Harwood said that there will be USGS reports on Lake Modeling and the Lake Sediment Study at the May BEIPC meeting. In response to a question by Luke Russell about funding for the work, Glen and Mike said they are seeking EPA funding to pay for laboratory analysis; other staff and resources for monitoring would be provided by the State and Tribe.

Woody McEvers asked for clarification on the alternative dispute process and whether it was an unusual approach. Mike Beckwith and Glen emphasized that it is an established options for addressing these kinds of issues.

Rusty Sheppard, speaking on behalf of the Lakeshore Owners/Spokane River Small Integration Group (SIG), stated that the SIG adamantly opposed the recommendation in the Harty report about a negotiating framework that only includes the Tribe, State, and EPA as primary negotiators (Model "A" in the report). He said that such an approach is not consistent with a February 2002 MOA between the State and counties. Rusty sought answers from Mike and Glen about whether the process was occurring "inside or outside of the BEIPC." Mike said that he would not characterize it either way and that the BEIPC would be consulted at an appropriate time. Rusty also sought confirmation that the process was not yet in Phase II. Mike and Glen confirmed that it was not, noting that there had not yet been a follow-up meeting to go over the assessment report and discuss its recommendations. Glen said that written comments on the report intended for the State of Idaho should be sent to Gwen Fransen at DEQ.

Rusty was also concerned about the monitoring plan, saying that it appeared to be part of the Lake Management Plan. He expressed his view that the Tribe and DEQ are preparing

the monitoring plan for the Lake Management Plan in violation of the 2006 BEIPC Workplan and the February 2002 State/County MOA between the State and counties, which describes how the LMP is to be prepared. Terry said that the monitoring plan was a continuation of the previous USGS work and the Tribe and State are moving it forward, in part because there was no BEIPC funding for the effort. Rusty said that he was not critical of the effort to continue the work begun by USGS.

Dennis Hinrichsen said that all of the residents near the Lake and River should be considered stakeholders, not just those with property on the water.

In conclusion, Mike asked for people's patience with the process as it moves along.

Basin Repositories

Ed Moreen, EPA, provided an update on Basin repositories. He noted that he is working with John Lawson from DEQ. Ed provided the following information:

- The DEQ-operated facility at Big Creek has approximately five years of capacity remaining, mainly for remedial action wastes but will also accommodate ICP-related waste from the Upper Basin.
- DEQ purchased property at East Mission Flats for a repository and is currently putting together a 30% design (targeted for release in April); the goal is to put some waste in the repository this year. This repository will mainly be remedial action wastes but will also be set up to accommodate ICP-related waste from the Lower Basin.
- For areas of the Basin that are not close to either Big Creek or East Mission Flats, DEQ is looking into providing satellite collection areas where waste can subsequently be transferred to the repositories. EPA and the State would provide these facilities, but Panhandle Health District would administer the program.
- EPA and DEQ recently completed a Waste Management Strategy, including analysis of likely sources of waste. This study confirmed the need for a repository like East Mission Flats, which would provide capacity in the lower Basin. It also highlighted the need for another Upper Basin site once Big Creek is at capacity.
- The Page repository, which mainly receives ICP waste from the Box, is very near its capacity in its current configuration. There is currently an assessment of ways to expand it that would be acceptable to the local community.

Contaminant Management PFT

Terry Harwood described the ongoing work of the Contaminant Management PFT, which has been focusing on how to deal with disturbance and/or removal of metals-contaminated sediments in Lake Coeur d'Alene and the Spokane River. The group has come to some core conclusions that will be communicated to the BEIPC board at its next meeting:

- There is a problem with sediment in the Lake and River contaminated by activities in the Basin.
- No entity is actively regulating upland disposal (i.e., above the 2128 foot mark) of contaminated sediment in the Lake and River.
- EPA says that it would need to amend the OU3 ROD to get involved in the issue, and that is an expensive and involved process.
- The State of Idaho is not likely to provide funding for disposing of this waste unless EPA does so as well; neither the State nor the counties have the authority to deal with CERCLA waste.
- In the absence of EPA or State funding, there is a risk that an ICP for the Lake or River would require that property owners pay for disposal themselves (unlike property owners in the Basin who do not have to pay for disposal of their ICP waste).

Jack Domit asked whether contamination has been found in the Spokane River. Terry, Dave Enos, and Jerry Boyd all said that contamination had been found. Terry clarified that the Army Corps of Engineers regulates contaminated sediment if it is used as fill in areas below the 2128 foot mark. Jerry and Terry clarified that contaminated sediment, considered mine waste, is exempt from regulation under the Resources Conservation and Recovery Act, which governs disposal of other types of hazardous waste.

In response to a question about nutrient loading from Dennis, Terry and Rusty described how metals coming into the Lake retard nutrient growth. The Lake Management Plan, Rusty said, has to deal with the Lake as a “moving target” as metal loads are reduced and their retarding effect on nutrients is diminished.

CCC members returned to this issue at the end of the meeting with Jerry Boyd saying that dealing with disposal of contaminated sediments from the Lake and River is an important issue that needs to be resolved. Woody echoed Jerry and said that EPA needs to analyze what it would mean to re-open the ROD in terms of costs and other issues. Mark Stromberg said that the real key to the issue was having a repository accessible to the Lake and River, a view that Rusty and others agreed with. If a repository were available, they suggested, a program requiring people to use it for dredged material would be relatively straightforward. Rusty said that there is a need to come up with a solid approach, not a band-aid solution. The solution, he said, will affect efforts such as Kootenai County’s work on a comprehensive plan. There were unresolved questions about whether waste from the Lake and River (under a possible future ICP) could be deposited at East Mission Flats and whether a new repository would have to be designated as receiving only ICP-related waste. In response to a question from Dave Enos about how Idaho treats these kinds of shoreline issues, Rusty said that material dug up on-site has to stay on-site.

BEIPC Updates

Final 2006 BEIPC Accomplishments Report

Terry Harwood handed out copies of the 2006 BEIPC Accomplishments Report. He highlighted its key sections and noted that it is the most useful document for describing all of the cleanup-related work being done in the Basin. The report is available at www.basincommission.com.

Clean Water Act Project Status

Terry handed out a document describing the financial status of projects supported by Clean Water Act funds. He noted that all first year projects are done except for the USGS lake sampling work; Mike Beckwith is working with USGS to complete the project (which will help inform the development of the Lake Management Plan). Rusty and Terry clarified that the USGS funding was for three years. When the three years were up, the State and Tribe agreed to fund another year of research.

Infrastructure and Flood Study

Terry passed around documentation of the inventory for the infrastructure and flood study he has been spearheading with authorization provided by the BEIPC last year and additional funding from EPA. Building on the effort to document all of the utility, flood control, and other infrastructure in the Box and Basin, the documents he passed around assessed where flooding might jeopardize cleanup remedies. Terry said that the estimated cost to restore remedies following a 100 year flood is \$80 million.

Terry said that there will be a workshop in the Upper Basin in late March to discuss the results of the flood analysis with local government officials and other stakeholders and identify key infrastructure needs. He said that local mayors, in particular, have been very supportive of the project, and some municipalities are already undertaking projects to prevent flood damage. In response to a question from Woody McEvers, Terry said that the cities had been very willing to provide information on infrastructure. Woody noted that he is impressed with the progress that has been made in moving cleanup forward and in building community in the Basin; he commended Terry for his work. Mike Mihelich asked if this work is related to the Army Corps of Engineers recent effort to re-evaluate flood plains, and Terry said that his current work on infrastructure is not related to the Corps' effort.

CCC Elections

Tom Beierle, Ross & Associates, said that elections for CCC chair and vice-chair would occur in March and April. He outlined the steps for electing the CCC Chair and Vice Chair as specified in the CCC Policies and Protocols. The basic steps are:

1. Small Integration Groups (SIGs) make regional nominations of candidates.
2. All nominated candidates are introduced to the CCC (either at a meeting or via a written bio).
3. Registered CCC members vote for two candidates via mail or email. The candidate with the highest number of votes becomes the CCC Chair and the candidate with the next highest number becomes Vice-Chair.

Tom said he would send around a more detailed note outlining the procedures and target dates for the election process. SIG representatives have been identified for most of the regions, and Tom said he would contact them with the contact information for CCC members in their areas.

Next Meeting/Upcoming Events

The next BEIPC Board meeting will be held on March 14 from 9:30AM to 4:00 PM at the Idaho Department of Health and Welfare Building, 35 Wildcat Way in Kellogg, ID.

Terry noted that Sherry Krulitz will be stepping down from the Basin Commission board for health reasons. She has recommended to Governor Butch Otter that he appoint Shoshone County Commissioner John Cantamessa to replace her on the board. At the March BEIPC board meeting, there will be elections for a new BEIPC chair and vice chair.

The CCC will meet next in May. One of the issues on the agenda will be an updated five year plan.

Presentation of Citizen Comments to the Basin Commission Board

March 14, 2007

Written Comments

There were no written comments submitted.

Verbal Comments

Verbal comments provided at the February 22, 2007 CCC meeting are reflected in the CCC meeting summary and restated below.

Comments

Commenter

The Lakeshore Owners/Spokane River SIG adamantly opposes the recommendation in the report, "Assessment Report on Prospects for Mediated Negotiation of a Lake Management Plan for Lake Coeur d'Alene," for a lake management plan negotiating framework that only includes the Tribe, State, and EPA as primary negotiators. Such an approach is not consistent with an MOA between the State of Idaho and the three counties represented on the Basin Commission.

*Rusty Sheppard, CCC
Member representing
the Lakeshore
Owners/Spokane River
SIG*

The monitoring plan described by the Tribe and Idaho DEQ appears to be part of the Lake Management Plan. The Tribe and DEQ are preparing the monitoring plan for the Lake Management Plan in violation of the 2006 BEIPC Workplan and the February 2002 State/County MOA between the State and counties, which describes how the LMP is to be prepared.

*Rusty Sheppard, CCC
Member representing
the Lakeshore
Owners/Spokane River
SIG*

All of the residents living near the river and lake should be considered stakeholders for the Lake Management Plan development effort, not just those with property on the water.

*Dennis Hinrichsen,
Meeting Participant*

The progress that has been made in moving cleanup forward and in building community in the Basin has been impressive; Terry Harwood should be commended for his work in helping to make this happen

*Woody McEver, CCC
Member*

The issue of how to dispose of contaminated sediment from Lake Coeur d'Alene and the Spokane River is an important issue that needs to be addressed.

*Jerry Boyd, CCC
Member*

The solution of how to regulate disposal of contaminated sediment from Lake Coeur d'Alene and the Spokane River needs to be a solid approach, not a band-aid solution. This is particularly important as counties undertake planning efforts, such as Kootenai County's current effort on a comprehensive plan.

*Rusty Sheppard, CCC
Member representing
the Lakeshore
Owners/Spokane River
SIG*