

Meeting notes

9/27/2002

Basin Environmental Improvement Project Commission

Meeting Notes: September 27, 2002

Meeting Location: Kootenai County Court House, Coeur d'Alene, Idaho

Commissioners present: Steve Allred, DEQ
Jack Buell, Benewah County
Sherry Krulitz, Shoshone County
Chuck Matheson, CDA Tribe
Dick Panabaker, Kootenai County
James McCurdy, Washington
John Iani, Federal Government

Commissioners absent: None

Staff present: Luke Russell, DEQ
Phil Cerner, CDA Tribe

Note taker: Luke Russell

Notes:

Interim Chairman Krulitz opened the meeting at 1:05 PM with introduction of board members and staff.

Old Business

The notes from the July 7, 2002 meeting were reviewed and approved without modification following a motion from Commissioner Panabaker, seconded by Commissioner Allred.

New Business

1. Federal/Washington Representation of the Commission – Newly appointed commissioner Iani, representing the federal government, introduced himself and commented that the Basin Commission is an innovative approach to Superfund cleanup with opportunity for strong local decision making, coordination and participation. He indicated the Commission is not a miracle worker and that mistakes will no doubt be made and asked for patience. However, he was cautiously optimistic that the Commission would be successful.

He indicated that due to potential liability issues that he was advised by legal counsel to be a non-voting member of the commission until this issue could be addressed by the Idaho legislature.

However, he would make it clear in discussions how he would vote, if he could vote, for consideration by the commission. Commissioner Krulitz indicated that there were legislative fixes under consideration for this issue as well as for the role of the county representatives on establishing annual work plans and budgets for the next Idaho legislative session.

Newly appointed Commissioner McCurdy, representing the state of Washington, introduced himself and commented that history would judge this unique opportunity for consensus based, local control in implementing a Superfund cleanup. The success of the Commission may ultimately be memorialized as the "Coeur d'Alene Basin Method". He envisioned strong citizen input but observed that the citizens would need to put in the necessary effort to keep up with the Commission. He presented business analogies where market opportunities were missed due to "paradigm paralysis" and indicated "paradigm pioneers" took advantage of new technologies and opportunities. The Basin Commission should be a paradigm pioneer in implementing its work plans.

2. Record of Decision – Sheila Eckman with EPA indicated that the Record of Decision for Operable Unit 3 was signed September 12, 2002. EPA has distributed fact sheets and the Record of Decision (ROD) and copies are available at the information repositories. To get a copy, the contact phone number is 1-800-424-4EPA. She indicated that the complete administrative record would be available at the information repositories in early October.

She then provided an overview of the next steps in implementing the ROD. Using an overhead she outlined the development of the Basin Commission Work plan and then Remedial Design and Remedial Action processes. The Remedial Design process would use EPA's "pipeline" budgets through regional prioritization. The funding mechanisms would include Cooperative Agreements, Interagency Agreements, and direct EPA contracts to do the design work. The Remedial Action budget requires a national prioritization with funding then going to the EPA region. The region would then use the same funding mechanisms to get the work implemented in the field. She indicated that both the state of Idaho and Washington would need to negotiate a state Superfund contract that would include commitment of the state's 10% match as well as assurance to perform operation and maintenance of the implemented remedy.

She indicated that the budgeting schedule would require the Commission to develop its plan in the spring-summer so it can be included in the EPA's fall Remedial Action budget requests. The funding would typically be known in the fall-winter when Congress passes its budget. The Commission should then revisit its proposed work plan to confirm available funding or to modify its plan based on the actual level of Superfund funding made available for Basin projects. However, actual funding may not arrive until later (second or third quarter).

She indicated that EPA has made a placeholder budget request for the Commission for this year as this was due before the full Commission had come together, and no Commission work plan is yet in place.

Commissioner Iani emphasized two critical times for Commission action are 1) the development of the spring work plan and 2) to confirm and review the plan once Congress allocates money for the Basin.

3. Commission Staffing - Commissioner Allred indicated there was a chicken and egg situation in regard to commission staffing. They needed to hire staff but needed a financial management structure before hiring, but that it would take staff to develop such a structure. Commissioner Krulitz indicated that Kootenia County had made a grant application for funding to support

Commission staffing at the county level. In addition, she had received citizen proposals to assist the county in staffing commission or the technical advisory groups.

Commissioner Panabaker indicated at the first Commission meeting, Commissioner Krulitz was made interim chair. Now that the Commission was fully populated (with federal and Washington representation) he would recommend she be formally elected to chair the Commission. Commissioner Iani supported this recommendation, if she was willing to take this on. He identified two main priority actions that included 1) how the Commission should operate especially in regard to the Technical and Citizen advisory groups, and 2) what the organizational structure (including staffing) would be for the Commission itself.

Commissioner Matheson cautioned that the Commission not get too far ahead of itself on staffing. He did support Krulitz as chair but wanted more time before decisions were made on staffing the Commission. He also suggested that Commission "voting rules" would need to be developed as an early priority.

It was moved by Commissioner Allred, seconded by Commissioner Panabaker that Commissioner Krulitz be elected as chairperson of the commission for a 1-year term. Commissioner Buell recommended a friendly amendment to this motion that the term is for 2 years. This was approved and the motion carried unanimously.

Commissioner Allred then recommended the commission move into executive session to further discuss staffing. He cited Idaho Code 67-2345(1) (a) to consider hiring staff as authorization for the executive session. With Commissioner Iani abstaining from voting there were 5 in favor (Allred, Panabaker, Krulitz, Buell, McCurdy) and 1 opposing (Matheson) going into executive session. The Commission then went into executive session at 1:40 PM.

At 2:25 the Commission reconvened.

Commissioner Iani offered to support the commission staffing with the appointment of an interim, dedicated EPA person who would be named later. Commissioner McCurdy identified John Roland of the Washington Department of Ecology who will assist in advancing implementation of cleanup and interim organization tasks for the Commission. Commissioner Matheson offered Phil Cerner and Commissioner Allred offered Luke Russell. Combined, these people will continue to be employees of their respective agencies, but will provide services to the Commission to advance Commission activities. Commissioner Allred indicated that consultants, like Ross and Associates and Kathy Johnson, would also be made available to the Commission to advance establishment of operating procedures and formation of the advisory groups. Commissioner Allred also indicated that the staff group had been asked to develop an accounting manual and budget proposal.

4. Lake Management Plan - Phil Cerner provided an update on the process to amend the Coeur d'Alene Lake Management Plan. He presented an overview of the process to review and update the plan, and while some issues remain with forestry and agriculture the draft preliminary summary and findings included, among others:

- Lake water quality remains good in the lake for nutrients, clarity and dissolved oxygen, but exceeds zinc standards by twofold and lead exceedances are reported at extreme high flow events;
- Some of the actions in the plan have been implemented, while others have not;

- There is no dedicated funding source for plan implementation;
- There is no organized coordination for implementation of the plan actions or monitoring; and
- Full implementation of the plan is still considered the best way to prevent mobilization of metals from the lakebed.

Some specific actions recommended include:

- A list of specific projects be developed to reduce sediment and nutrient loading to the lake;
- Funding sources must be identified and secured to implement the plan;
- A monitoring plan should be included in the plan and implemented;
- Staff should be hired to coordinate plan implementation; and
- The lake management plan should be endorsed by the Basin Commission and included in its work plans.

Commissioner Krulitz inquired on potential funding sources to assist in nutrient management, especially given the high load to the river from the Page water treatment plant. Mr. Cernera advised that he and Luke Russell were looking at other funding sources, such as EPA's watershed initiative grant, to assist in implementing projects in the basin to reduce sediment and nutrient loading.

Commissioner Allred indicated there is a need to coordinate infrastructure needs in the valley using both CERCLA and non-CERCLA funding sources. He indicated that once the state and Coeur d'Alene Tribe adopt the Lake Management Plan it would be formally submitted to the Idaho legislature to become an enforceable plan. Commissioner Krulitz asked if the counties would also need to sign-off on the amendments, as they were part of the original lake management plan. Commissioner Allred indicated that they would and this was addressed in the Memorandum of Agreement signed by the state and counties on the process to amend the Lake Management Plan.

5. Infrastructure Development Plan- Tom Bourque with Terragraphics presented an overview of the infrastructure development plan that is being prepared for the "Box" and basin communities by the State of Idaho. This plan seeks to coordinate the efforts of the counties and the cities in the valley to develop a comprehensive plan beyond Superfund to protect the Superfund remedies, update and improve the infrastructure system, and provide for economic development in the valley. The plan is a tool to assist in development of a comprehensive project and funding strategy that includes sequencing of priority projects, identifies funding sources, develops a funding model, provides an integrated approach or "road map" to coordinate infrastructure improvement and superfund remedy work in the valley.

Commissioner Panabaker asked if the South Fork Sewer District was considering consolidating its system. Ross Stout of the sewer district was in the audience and indicated that it was not currently their plan to expand its service to include other entities.

6. EPA Funding Request – Luke Russell presented an update on the funding request to EPA for the \$2 million dollars appropriated by Congress for the Basin Commission under the Clean Water Act. At the last Commission meeting, staff was directed to advance planning for the Rex Mine site in the EF of Ninemile Creek. Staff met with the site owners, EPA, BLM, DEQ and Tribe to review the current plans and develop a preliminary cost estimate for this work. Mr. Russell presented that there was additional engineering and planning work needed to advance the plan and prepare bid documents for work next year. Approximately \$20,000 was identified to complete this aspect of the project. The total project cost was estimated at \$400,000 including project engineering and construction oversight. He requested guidance from the Commission on going forward to complete the engineering aspects for the project.

He then indicated the manner in which the congressional appropriation was made for the \$2 million held that it could not be used for projects that could be funded by Superfund. Therefore, because the Rex project could be funded by Superfund it may be ineligible for this current funding appropriation under the Clean Water Act.

He indicated that staff had reviewed other non-Superfund related projects the Commission may want to consider, including staffing, lake management plan implementation and remedy protection projects including storm water management and infrastructure improvement projects. However, to qualify for the grant under the provisions of the Clean Water Act, the projects must be demonstration or pilot projects that advance pollution prevention understanding and transferring of knowledge.

Commissioner Buell requested staff look to obtain funds other than Superfund to advance project planning so this project could be ready to do next season, with Superfund money or other as appropriate. It was moved by Commissioner Allred, seconded by Commissioner Panabaker that staff prepare a proposal or grant application for the 2 million dollars for non-Superfund projects for the next commission meeting. This request should include business support for the Commission, lake management coordination, and remedy protection. The motion carried unanimously with Commissioner Iani abstaining.

Commissioner Iani then mentioned the potential restrictions on the use of Superfund money where there is a viable potentially responsible party (PRP). He indicated that there might be such a PRP at the Rex site. Commissioner Panabaker indicated that this issue was discussed at a previous Commission meeting. Commissioner Krulitz indicated this would be an issue at many sites in the basin including the Monarch Mine in the North Fork where Shoshone County is a landowner. Commissioner Allred indicated that the Commission should make it clear that the PRP's may be liable for potential cost recovery but that this should not stand in the way of the Commission getting work done.

7. Advisory Groups Update - Luke Russell presented an overview of the roles of the Commission, Commission staff, as well as the Technical Leadership Group and the Citizen Coordination Council. He outlined the roles, responsibilities and membership criteria for the various advisory groups as mentioned in either the Idaho Statute or the August 13 Memorandum of Agreement. He indicated that membership of the Technical Advisory would be by representatives of the entities that have regulatory or land management responsibility in the Basin. The Citizen Coordinating Council would be comprised of those representing specific interest, geographic areas, special interest groups or those with technical or scientific expertise. He added that it was envisioned that smaller technical and citizen groups may be formed to work on specific work projects in a particular area and then communicate back to the larger advisory groups as a form of peer review or reality check of the proposed work in that area.

He indicated that the response to the application forms for membership on the various groups was less than had been anticipated. He recommended that the Commission request that entities appoint their representatives to the Technical Leadership Group, and a formational meeting be called to help organize this group. The list of members could then be brought to the next commission meeting as a slate for consideration by the Commission. He also recommended the commission re-advertise its interest in forming a Citizens Coordinating Council and an organizational meeting be called to assist in getting interested people involved. He recommended that Ross and Associates help in the formational meetings of both of these advisory groups.

Commissioner Panabaker asked how members would be picked for these various groups. Mr. Russell suggested that a slate of potential members be brought back to the Commission after the initial formational meetings were held and the Commission confirm or acknowledge them at that time. Commissioner Allred supported this.

Commissioner Iani indicated that the advisory groups were very important to the Commission but would have very different roles and needed to both be of a manageable size. The Technical group would help on the when and what was done and the citizen group on the how and other aspects. But both groups should bring their voice back to the Commission.

Commissioner Allred requested that staff convene meetings to determine interest in both advisory groups. He suggested the Technical group come together and be tasked with developing a short-term (12 month) work plan and identify the list of on-going agency actions in the basin. Commissioner McCurdy offered to work with staff in the formation of both advisory groups.

7. Community Protection Agreement – Randy Siemers with the Washington and Northern Idaho District Council of Laborers addressed the Commission in regard to establishment of a Commission policy on worker issues related to work under taken by the Commission. He indicated that the Laborers were interested in the Commission developing a policy that would address local hire preference, apprenticeship programs, family health care plans, defined benefit pensions, dispute resolution and living wages. He requested an opportunity to work with Commission staff to develop such a policy for formal consideration by the Commission.

The Commissioners generally supported in concept the need for local hire, livable wages and benefits for workers working on basin remediation projects. However, Commissioner Allred cautioned that the Commission would be limited in what it could do in this regard given that Idaho is a right to work state. The commission then directed staff to discuss this issue further with Mr. Siemers.

8. Public Comment – Commissioner Krulitz then opened the floor for comments from the audience. Ross Stout indicated that the Page water treatment plant was not 70% of the nutrient load in the SF Coeur D'Alene River as suggested earlier, but was the largest point source or piped discharge to the river.

Ron Green indicated that when MK was doing work in the basin that 80% of the work force was local hire.

Roger Hardy suggested a shift in the Commission approach on the Technical Leadership Group over the past several months in that general citizens would now not be part of the Technical Leadership Group, but rather only agency representatives. He indicated that the citizens group was not on equal footing with the technical group. Commissioner Krulitz responded that she was ready

to appoint her representative(s) to the Technical Leadership Group and they were not government employees but citizens.

Tony Hardy indicated that citizens were being excluded from the process. The Commission was not in compliance with EPA's public involvement requirements and the governments were generally non-responsive to citizen issues. The citizens needed direct access to all the information available to the governments.

John Snider expressed concern that the Idaho DEQ had dumped the Citizens Advisory Committee but they intended to remain involved in the activities of this commission. He urged the Commission to seek the voice of the CAC, the Shoshone Natural Resource Committee and other groups that have been involved and have valuable experience to offer this commission. He expressed that organization for the advisory groups presented in this meeting could work but needs somebody to make it work.

Commissioner Allred offered that the Technical group should focus on the technical aspects of projects so they are consistent throughout the basin and the citizen groups have a direct voice to the Commission, especially on the manner and priority of work so it meets local needs.

Ron Roizen requested a motion of the Commission to formally support the National Academy of Science review. Discussion followed that the Commission was open to new or innovative science and technology and supported such reviews. EPA has indicated in the ROD that it will consider the findings of the NAS review should it be conducted. However, the Commission did not feel it appropriate to formally take a position on the NAS study.

Clyde Sheppard expressed that excluding private landowners on the Technical Leadership Group has the appearance of presupposing that the governments are more important than private landowners.

Kathy Zanetti hoped the voice of citizens could be heard, but let's not shoot each other before this has a chance to work. She indicated the August 13 Memorandum of Agreement ruffled feathers in the community but it can be worked out. The Technical advisory should not just include agency people.

Lloyd Brewer with the Washington Citizen Advisory group expressed interest of his group to be involved with this Commission to get the work done.

The Commission then decided to meet regularly on the 4th Wednesday of each month with the next meeting scheduled for October 23, 1:00 PM, at a place to be determined.

There being no other business, the meeting adjourned at 4:20 PM