

BEIPC MEETING
Basin Environmental Improvement Project Commission
March 14, 2007

Idaho Department of Health & Welfare
35 Wildcat Way, Kellogg, ID

Attendees:

Mr. Terry Harwood (Executive Director)

Commissioners and Alternates Present:

Mr. Rick Currie (Vice Chair)

Mr. Jon Cantamessa

Ms. Elin Miller

Mr. Jack Buell

Mr. Grant Pfeifer

Mr. Phillip Cerner

Mr. Curt Fransen

Staff Present:

Mr. Ed Moreen

Mr. Mike Beckwith

Ms. Jeri DeLange

Mr. Dave George

Mr. Rob Hanson

1) Call to Order and Introductions: The BEIPC Vice Chair, Commissioner Rick Currie, called the meeting to order at 9:30 a.m. He welcomed everyone and called for the flag salute. Then he asked everyone to introduce themselves. Commissioner Currie also introduced the two newly elected Kootenai County Commissioners, Mr. Rich Piazza and Mr. Todd Tondee; and Commissioner Jack Buell introduced Benewah County Commissioner, Mr. Bud McCall. Also in attendance were staff members from the Congressional delegation which included: Mr. John Martin (US Senator Larry Craig); Ms. Karen Roetter (US Senator Mike Crapo); Ms. Tina Jacobson (US Representative Bill Sali); and from Governor Otter's North Idaho Office, Mr. Mark Compton.

2) Special Announcement: BEIPC Commissioner Elin Miller (EPA) made a special announcement of appreciation to honor the Bunker Hill Task Force and thank them for their many years of service in the Bunker Hill cleanup.

3) Approval of BEIPC Minutes from November 29, 2006: A motion was made by Commissioner Miller to approve the minutes as written and was seconded by Mr. Grant Pfeifer. Mr. Phillip Cerner pointed out a correction on page 9, last paragraph, regarding the correct spelling of appendices. The minutes were approved as corrected.

4) 2007 BEIPC Meeting Dates: Mr. Terry Harwood announced the schedule for the 2007 BEIPC meetings.

- May 23 – Lower Basin (Coeur d’Alene or Post Falls)
- August 15 – Upper Basin (Wallace or Kellogg)
- November 14 – Spokane, WA (possibly Gonzaga University Law School Library)

5) Special Announcement: Mr. Harwood mentioned that Ms. Robbin Simmons (IDEQ) had recently passed away a few weeks ago. He indicated that Ms. Simmons provided assistance to the BEIPC when it was newly formed. He expressed his sorrow and said that she would be missed by everyone very much.

6) Election of Commission Leadership: Before the nominations began, Mr. Harwood mentioned that Commissioner Sherry Krulitz had stepped down as the BEIPC Chair and that Commissioner Jon Cantamessa had been appointed as the replacement for Shoshone County by the Governor. Commissioner Krulitz was appointed as Commissioner Cantamessa’s alternate. Commissioner Currie expressed the BEIPC’s appreciation for the excellent job that Commissioner Krulitz did as Chair and thanked her for serving for many years.

Commissioner Currie called for nominations for BEIPC Chair. Mr. Curt Fransen nominated Commissioner Cantamessa for the position and it was seconded by Commissioner Miller. As there were no other nominations, Commissioner Currie called for a motion to approve unanimously. Mr. Fransen moved to approve; seconded by Commissioner Miller. The motion was approved unanimously.

Commissioner Jack Buell made a motion to nominate Commissioner Currie for the position of Vice Chair. The nomination was seconded by Mr. Fransen. Mr. Cerner made a motion to nominate Mr. Fransen, but it was not seconded. Commissioner Currie called for a motion to approve the nomination unanimously. Commissioner Cantamessa made the motion; seconded by Commissioner Buell and it was approved unanimously.

Commissioner Miller nominated the State of Idaho for the position of BEIPC Secretary/Treasurer. The nomination was seconded by Commissioner Cantamessa. As there were no other nominations, Commissioner Miller made a motion to approve it unanimously. The motion was seconded by Mr. Grant Pfeifer and unanimously approved. Mr. Fransen clarified that Ms. Toni Hardesty would be the BEIPC Secretary/Treasurer for the State of Idaho, as an alternate may not serve as an BEIPC officer.

7) Discussion of BEIPC 2006 Accomplishment Report: The Executive Director, Mr. Terry Harwood presented the BEIPC annual accomplishment report for 2006. He indicated that he constantly reviews the work plan during the year and that everyone did a good job. He recognized IDEQ for the impressive number of properties that were remediated and pointed out that they cleaned up over 500 properties. Mr. Harwood emphasized that lots of progress was being made; and he encouraged the congressional delegation to share the report with Congress. He also informed everyone that the 2006 report was on the BEIPC web site for anyone interested in obtaining a copy.

8) Update on Water Treatment PFT Activities: Mr. Bill Adams (EPA) gave an update on the water treatment PFT activities. He pointed out that all of the projects focus on addressing water treatment in the Basin and that the current projects include the following:

- Canyon Creek pilot-scale lime lagoon treatment system;
- Success Apatite evaluation system;
- INL Canyon Creek project;
- MSE passive media evaluation;
- Canyon Creek treatability study (i.e. hydro-investigation, modeling, and alternative evaluation; and
- OU-2 water quality monitoring and evaluation.

At the end of the presentation, various water treatment methods were discussed. Mr. Harwood noted that as treatments are developed to deal with the metals contamination problems we need to keep in mind the issues on how they can be maintained and funded, and what can be done to make the process work better.

Break

9) CWA Project Final Report, Success Mine and East Fork Nine Mile Creek: Mr. Neal Yancy (INL) made a presentation on the final report for the Success Mine and East Fork Nine Mile Creek.

10) CWA Project Final Report, Canyon Creek Groundwater Metals: Ms. Karen Wright (INL) presented the final report for the CWA project on Canyon Creek groundwater metals.

Before lunch, Mr. Fransen made a motion for the BEIPC Commissioners to go into executive session to evaluate staff and personnel under Idaho Code § 67-2345(1)(a)&(b). Commissioner Miller seconded the motion and it was approved unanimously.

Lunch

Before the meeting reconvened, it was noted for the record that Commissioner Buell made a motion to come out of executive session that was seconded by Mr. Pfeifer. The motion was approved unanimously.

11) Basin ICP and Contaminant Management PFT Update Report: Mr. Harwood gave an update first on the Basin ICP process. After the Basin ICP draft rule was approved by the BEIPC in June 2006, it went to the PHD (Panhandle Health District) for public comment and approval by the PHD Board in order to be finalized by the Idaho State Legislature.

Mr. Harwood reported that he and Mr. Jerry Mason (PHD Attorney) testified on the proposed rulemaking in both the Senate Health & Welfare committee and the House subcommittee during the legislative session. He indicated that he was asked by the full House committee to testify the following week, however; he was not able to attend due to a medical emergency. Mr. Harwood said that he asked Ms. Toni Hardesty to testify on his behalf as a BEIPC Commissioner and clarified that she did not testify as the Director of IDEQ. The Basin ICP rule was approved by

the Legislature and will become effective on July 1, 2007. He also mentioned that now the EPA, PHD, and State of Idaho would need to work on a MOA (Memorandum of Agreement) on how to fund and implement the rule.

Mr. Harwood noted that the BEIPC approved a motion last June to direct the BEIPC Executive Director to form a PFT (project focus team) to discuss contaminant management in CDA Lake and the Spokane River downstream from the Basin ICP administrative area. He then provided an update on the Contaminant Management PFT. He mentioned that he had prepared a white paper on contaminant management issues which was included in the board packet information. He noted that test data has shown that there are some contaminated areas along the flood plain and in the Coeur d'Alene Lake and the Spokane River from historical mining and milling activities. The current ROD for OU-3 (Operating Unit #3) includes those areas as any place where contamination has come to be located and focused largely on the floodplain, river corridor, and upstream communities. Mr. Harwood explained that although a CERCLA remedy for the Lake was not addressed in OU-3, that this does not mean the Lake is not listed.

He added that this has caused issues for some time for the various agencies who are trying to deal with contaminant management in the Lower Basin such as the IDEQ, IDL (Idaho Dept. of Lands), COE (Corps of Engineers), and Kootenai County (especially in regards to permitting activities around the Lake). Mr. Harwood then discussed other issues such as there does not appear to be adequate regulations to control the disposal of excavated and dredged materials above the high water mark. Because of this, Mr. Harwood pointed out that there was a potential for someone to be liable under CERCLA for these actions. He said that the PFT would like some direction for what to do under these circumstances and brought up that another part of the problem is funding.

Mr. Cernera commented that he wanted to respond to some of the discussion issues by the PFT as presented by Mr. Harwood. He brought up that the CDA Tribe also deals with contaminated sediments in the beds and banks and that the Tribe should be included under regulatory agencies in the third and fourth bullet and anywhere it talks about submerged lands. Mr. Cernera said that back when the ROD was being contemplated, the Tribe had concerns about the limited scope of the areas that needed to be addressed, in particular, the lack of a remedy for Lake. The Tribe was very skeptical and believed that there would come a time when they would be faced with these same issues today.

He mentioned that although the BEIPC now exists to implement collaborative approaches to deal with the ROD, that the same problem still exists. Mr. Cernera referenced that on page 1 of the white paper, underneath test data, it states that there are "some" areas where contaminants are found along the Lake and Spokane River. He suggested that it should be "extensive" areas. He reiterated that it is still obvious today that there is a lack of authority and lack of funding, needed to address this. He mentioned that the Tribe has policies and procedures in place for their encroachment program, but that they do not allow dredging or contaminated material to be moved as there are no repositories to put it in. Mr. Cernera pointed out that historically everyone was adamantly opposed to including the Lake in the remedy and that this is the reason why we are facing these issues today because there is no remedy for the Lake, no funding, and no authority under CERCLA.

In addition, he suggested that now some people believe that the whole objective of the Lake Management Plan (LMP) is to deal with metals. However, he said that the Tribe is not contemplating some sort of State and Tribal ICP to deal with metals removal. The Tribe's objective for the LMP is to leave the metals in place and use nutrient management as a mechanism to keep the contaminants in place. Mr. Cernera asked what the solution would be and questioned what the thoughts are of the State and EPA on this issue in the long term.

Mr. Harwood responded that the PFT tried to follow the motion made at the BEIPC meeting in that regulations should be site specific. For example, if someone wanted to build a seawall, then they would have to test the soil and it would be a site specific situation if contaminants were found.

Further discussion focused on various issues such as: 1) who are the potential authorities; 2) what are the potential options; 3) what is the magnitude; 4) what statutory or regulatory changes may be required; 5) funding; 6) site disturbance permitting; etc. At the conclusion, Mr. Cernera made a recommendation for the discussion to go back to the PFT and to also utilize the TLG's expertise so that Mr. Harwood could prepare another white paper with recommendations to bring back to the BEIPC.

12) Update on current LMP (Lake Management Plan) Implementation and Audit Survey: Ms. Rebecca Stevens (CDA Tribe) and Mr. Glen Rothrock (IDEQ) made a presentation on the current status of the LMP audit survey. This information will be used to help implement the LMP and they hope to have the recommendations for the final report completed by the end of summer.

13) Update on LMP Negotiations for Updated Plan: Mr. Cernera gave an update on the current LMP negotiations. He informed everyone that the mediator had completed his report for the first phase. Mr. Cernera said that there was nothing new in the report from the Tribe's perspective as the same impasses exist now that existed in 2002. The issues include the: 1) scope; 2) type of monitoring; 3) funding; 4) types of studies as recommended in the NAS report; 5) staffing; 6) levels of coordination; and 7) authority. He indicated that the Tribe would prefer a LMP to be the solution for the Lake if possible. The Tribe and State will meet again to work on advancing into the second phase with the mediator and hopefully reach compromises. Mr. Cernera believed that everyone is frustrated with the process, but they are committed to resolving it to come up with a joint LMP.

Mr. Fransen commented that it was a good summary made by Mr. Cernera. He brought up that it was his understanding that the State of Idaho had reviewed the mediator's report and that one of the alternative recommendations that the State is prepared to go forward with is Model A. He pointed out that the mediator made a number of recommendations in Model A that should and could happen. Mr. Fransen said that it remains for the State, Tribe, mediator and EPA (with input from local governments) to figure out exactly what Model A is and how it will go. Other issues include: 1) how to go back to the public; 2) how to deal with the input from counties and cities; 3) how to deal with other state agencies input. He indicated that primarily in Model A, the

Tribe and State (IDEQ) with assistance from EPA and the mediator would discuss the issues that need to be worked out. He mentioned that the State is preparing to move into Phase 2.

Commissioner Cantamessa brought up concerns he had heard from the public about the perception of secret negotiations for the LMP. He mentioned that the State of Idaho and the Tribe have the mission to work on this, but that the counties have an interest too. They have been involved for a long time along with being a part of the MOAs; and that there will be items that affect all 3 counties as the LMP is developed. He believed that the State of Washington and EPA will have an interest too. Commissioner Cantamessa pointed out that all of the entities are represented on the BEIPC and he feels that the BEIPC has a mission to keep the parties together, so it's important to him to keep the LMP as the focus and interest of the Basin Commission. He also believed that the Lake is not only in the interest of the Tribe and State of Idaho, but belongs to the public. Because of this, he suggested that more of the negotiations should be in public view and that it may help to produce a better result. He emphasized that he believed the BEIPC, counties, and public should be involved in the process.

Commissioner Currie asked if the counties would be involved in Phase 2. Mr. Cernera answered that he believed they would, but primarily there would be State and Tribe discussion. The mediator would bring in stakeholders as he deemed appropriate for the various issues as well as stakeholders that the State and Tribe deemed also.

14) Discussion on LMP Section Work Plan Section: Mr. Terry Harwood mentioned that he had prepared a white paper on the LMP section which was included in the board packets along with a copy of the BEIPC 2007 work plan. He said that the TLG voted to include a draft version at the last meeting, but that the BEIPC voted to remove it as there were concerns expressed because the mediator's report had not been produced yet. However, it was noted in the minutes that it would be brought back to the BEIPC to readdress at the next meeting.

Mr. Harwood informed everyone that the MOA for the BEIPC indicates that the Basin Commission may address the adoption, implementation, and coordination of a Lake Coeur d'Alene LMP to manage, enhance, preserve and protect the Lake water quality. He also did some research and found that the BEIPC had been involved in the LMP process since the inception of the BEIPC; and that \$2.8 million had been provided in environmental research and support of Lake Management. He emphasized that no one can say that the BEIPC has not been involved in the LMP process; and also clarified that as the Executive Director of the BEIPC, he believed that the intent is that the BEIPC be involved in the LMP process.

Mr. Cernera commented that speaking as a Tribal representative when Commissioner Currie voted on removing the LMP section at the last meeting, that he was 100% in support of the action. However, he feels that now the BEIPC has to go back to the beginning. It seems to him that there is a little confusion about the BEIPC's role as there is nothing in the Statue about the BEIPC being involved in the LMP. He indicated that this came about through the MOA which talked about LMP implementation. Mr. Cernera said that the State and Tribe are now working on a new LMP; and although he does not have problems with the BEIPC being involved in lake management activities or potentially being involved in coordinating and implementing the LMP that is being developed by the State and Tribe, he does not believe that the BEIPC is an equal

partner. He questioned what the role of the BEIPC was and suggested that language for the LMP section in the work plan pertain to actual actions of the BEIPC such as the projects related to the \$2.8 million. Mr. Cernera emphasized that the language in 3.4 was outdated and that he believed the draft language for 1.8 was more appropriate. However, he suggested that the BEIPC may want to elaborate more on the language such as: the “potential” development of a LMP. He also commented that it would not be appropriate to include language that mentions deletion as he believed that this issue would not occur in the near future.

Before public comment began, Mr. Harwood informed everyone that a vote would be taken later on the issue of whether to add the LMP section back into the work plan and asked for people to also comment on the other issues discussed such as contaminant management.

15) Public Comment on LMP and Contaminant Management Issues: Mr. Bob Hopper (Bunker Hill Mine Owner) commented on Mr. Cernera’s remarks about the number of times the use of “impasse” was brought up. Mr. Hopper suggested that the word impasse magnifies the whole meeting today. He also brought up the term “double bind” and suggested that the more people involved in anything, the harder it is to develop. Mr. Hopper indicated that he was not sure that the BEIPC was going to continue and questioned how many more times there would be impasses. He made a recommendation that the information be broken down into bits and that if it is voted down, then it would be gone.

Mr. Bret Bowers (CDA Lakeshore Property Owners Association) remarked on Mr. Hopper’s global view of the issues. He said that lakeshore property owners are concerned about deletion of the Lake and further Superfund expansion downstream and that it’s happening. In addition, they are unsure that deletion will ever occur as a result of the impasse with the LMP. He pointed out that Commissioner Buell is the only commissioner that is the same from the origin of the BEIPC; and that only 3 of the commissioners are elected while the rest are appointed. He remarked that local government should be driven by the will of the people. Mr. Bowers suggested that people need to be involved with every aspect of the LMP and that being excluded would be a mistake.

He congratulated Mr. Bill Rust on his idea for passive water treatment in Canyon Creek and proving that it was possible and less expensive. He reiterated that this idea came from the people and that the people knew going into it that it would work. Mr. Bowers brought up a news article that Mr. Ron Roizen wrote about voluntary yard removal cleanup and that the program is not voluntary. He then discussed the Basin ICP and its effect on property owners downstream or on the Lake; and commented that he does not believe it would be limited to the shores and Lake. He indicated that he attended two PFT meetings and personally asked the IDL and COE to be there or make their position known for the LMP. Since they did not, he questioned the Basin Commission’s authority. He also questioned the role of the BEIPC in PHD wastewater rulemaking that he believed it was outside of Superfund. (Note – This was clarified later that the BEIPC was not involved with this aspect of the rulemaking).

Mr. Jim Hollingsworth (Lands Council) indicated that he represented 1600 members in Spokane that were the downstream recipients of what happens here in the Basin. He welcomed Mr. Rust back and acknowledged him for being a great contributor to the process and thanked him for his

work. He added to Mr. Bowers remarks about the BEIPC going through a lot of change with the makeup of the BEIPC. Mr. Hollingsworth commented that the Lands Council had a lot of distrust at the start of the process and sometimes disagreed more because people did not know each other, however, he feels that this was a good meeting.

Mr. Hollingsworth brought up the agreement between the States, Tribe, counties, and federal government and suggested that it was a mistake to separate the Lake from the remedy. He said that this was done because people were afraid of the so called stigma, but now believes that people recognize that this was a mistake and that we are suffering from that oversight. He emphasized that the objectives should be to have as healthy a watershed as possible; and suggested going back to the PFT to determine authority for the issue of contaminant management. He brought up that funding will also be a concern and suggested re-energizing the funding PFT.

Mr. Ross Stout (South Fork Sewer District Manager) mentioned that there was an issue that he was extremely interested in regarding the infrastructure revitalization and that he was anxious to see what may be coming up in the agenda. He mentioned that he had written a letter in February to Mr. Harwood in regards to an agreement for Contract #C068 and that Mr. Harwood had responded, but that this was his only time to comment.

Break

16) CCC Comments and Presentation: Mr. Jerry Boyd (CCC Member) made a presentation for the Chair, Mr. John Snider, as he was unavailable. He indicated that there was a lot of concern in regards to the mediated negotiations for the LMP; and that members of the CCC and the public feel that there are secret negotiations going on. Mr. Boyd mentioned that according to Model A, it does list that the State, Tribe and EPA may meet as one of the methods, but that the public feels left out as he understands it. The CCC also discussed contaminant management issues and that there are no repositories outside of OU-3 to dispose of it. Other issues raised included funding and who pays. Mr. Boyd concluded that the CCC had a good meeting and that it was well received.

Ms. Stevens asked if she could comment about some of the concerns that people had about the LMP process and who were feeling left out. She indicated that the LMP audit was a good avenue to be involved and that she would appreciate feedback for the audit survey. She also suggested that people provide more direction to the BEIPC regarding the contaminant management PFT.

17) Discussion and Vote Concerning a Need for a LMP Section in the Work Plan: Mr. Harwood explained that a vote was not needed by the BEIPC, but that he wanted to bring up to them whether they should task their staff and the TLG for the language which should be included in both the one and five year work plans. He also wanted the BEIPC to give direction to him about whether to include a section on the LMP because it does have a bearing on both plans.

Commissioner Buell made a motion to keep the LMP section in the work plan and that language be developed that is consistent with the BEIPC for both plans at the next meeting. Mr. Fransen seconded the motion.

Mr. Cernera mentioned that if it's the desire of the BEIPC to move forward with this, he recommended that the heading be Lake Management Activities. He also suggested that it be defined what the BEIPC has been doing because they still have CWA project funding dealing with lake management activities. Then, if you still desire to include coordination with how the BEIPC deals with the State and Tribe LMP, it would be fine too. He suggested that the language in 1.8 was palatable for the Tribe with the omission of deletion; and that the BEIPC should not be talking about deletion.

Commissioner Currie commented that by changing lake plan management from lake plan activities, he had a problem with the definition because activities may include everything from fishing to water skiing, and construction. Mr. Cernera explained that part of the definition for the BEIPC relates to lake management activities that pertain to improving water quality. He suggested that however the BEIPC wishes to wordsmith it is fine, but that he believed the BEIPC's role in the Lake is to improve and protect water quality.

Commissioner Buell clarified that his motion was for the Executive Director to come up with two or three items where the BEIPC needed to be and bring them back to the BEIPC so that they may be decided upon at the next meeting. Commissioner Cantamessa suggested that the items be well circulated before the next meeting.

Commissioner Currie called for the question and the motion passed unanimously.

18) Report on Basin Infrastructure Revitalization and Flood Control Plan: Mr. Harwood made a presentation on the Basin IRP (infrastructure revitalization project) and flood control plan. He passed out copies of the infrastructure inventory maps that were developed that include all of the flood control structures in the Basin as well as the deposition of the various areas of mine and mill waste. Mr. Harwood explained that the next step will be to hold a workshop in April to meet with the representatives of the local cities, utility managers, etc. to develop a list of infrastructure needs within the community. Another meeting will be then be held to prioritize the list in order and seek grants and other potential funding sources. Mr. Harwood noted that he is funding the work for the IRP through savings from the BEIPC budget.

Regarding the flood control project, Mr. Harwood added that the estimate to remediate damage from a 100 year flood to the Superfund remedy would be approximately \$80 million dollars. He mentioned that an inventory of all of the dikes, culverts, etc. in the Upper Basin will be conducted to determine potential flooding concerns and what the needs are. Mr. Harwood indicated that the EPA has funded this portion of the project.

19) Report on Blood Lead Issues: Mr. Rob Hanson (IDEQ) made a presentation on blood lead issues and a proposed plan to increase participation for exploring options blood lead with other health agencies and governmental entities. He indicated that he hoped to have more information for the BEIPC meeting in May.

20) Adjourn Meeting: Commissioner Currie thanked everyone for attending. Mr. Cerna made a motion to adjourn, seconded by Commissioner Miller. The vote was unanimous and the meeting was adjourned.