

BEIPC MEETING/WORKSHOP MINUTES
Basin Environmental Improvement Project Commission
August 15, 2012, 9:15 - 11:45 a.m.
Wallace Inn, 100 Front Street, Wallace, ID

Attendees:

Mr. Terry Harwood (Executive Director)

Commissioners Present:

Mr. Jack Buell (Vice-Chair)

Mr. Jon Cantamessa (Chair)

Mr. Phillip Cerner

Mr. Curt Fransen

Mr. Dan Green

Mr. Dan Opalski

Mr. Grant Pfeifer

Alternates Present:

Mr. Rob Hanson

Mr. Vince Rinaldi

Staff Present:

Ms. Jeri DeLange

Mr. Dave George

Mr. Ed Moreen

Mr. Bruce Schuld

Ms. Rebecca Stevens

1) Call to Order/Welcome: The BEIPC Chair, Commissioner Jon Cantamessa (Shoshone County) called the meeting to order at 9:15 a.m., followed by the flag salute.

2) Approval of BEIPC Meeting Minutes from May 16, 2012: Commissioner Cantamessa asked if there were any changes or corrections to the minutes. Commissioner Curt Fransen (State of Idaho) indicated a correction on page 5, item 10, for the representatives of the Natural Resource Restoration Trustee Council. He clarified that his name should be deleted as Mr. Chip Corsi (IDFG) is the appointed Trustee for the State of Idaho.

Commissioner Grant Pfeifer (State of Washington), inquired about EPA's High Priority Projects listed on page 2, item 5, under Upper Basin ROD Amendment Update. It was his understanding that water quality at Nine Mile and Canyon Creek was a high priority project; however, it was not included in the list. Mr. Bill Adams (EPA) answered that the list of projects was first phase in the planning process. For clarification, Commissioner Cantamessa suggested changing the text from "high priority" to "*first phase.*"

Commissioner Phillip Cerna (CDA Tribe) noted a correction on page 5, item 10 (second to the last sentence), to replace the word “lands” with “*natural resources*” so that it reads, “Their mission is to restore, acquire, and rehabilitate the *natural resources* that have been injured as a result of the release of hazardous substances.” Ms. Jeri DeLange (BEIPC) indicated another correction on page 5, item 10 (second paragraph), as Jeff Johnson was listed as USFS, but should be BLM. Commissioner Pfeifer made a motion to approve the minutes as amended. The motion was seconded by Commissioner Fransen; and approved unanimously.

3) Update on North Idaho Fair Booth: Ms. Denna Grangaard (IDEQ) provided an update on the joint fair booth for public education and outreach. This is a collaborative effort by the IDEQ, Basin Commission, CDA Tribe, EPA and Panhandle Health District.

4) Coeur d’Alene (CDA) Lake Management Plan (LMP) Update: Ms. Laura Laumatia (CDA Tribe) gave an update on LMP activities. The Tribe and State have been working on public education and outreach at Camp Cross, Camp 4 Echoes, the Tribal Leadership Camp at WSU (Washington State University) and the joint booth for the North Idaho Fair. On September 15th, the LMP will be presenting a community workshop on CDA Lake water quality and hands-on science at the Tribal Wellness Center in Plummer. The LMP Facebook page is posted at: <http://www.facebook.com/CdA.LMP>. Mr. Glen Rothrock (IDEQ) provided some information about river bank stabilization projects and Commissioner Cerna gave a brief update about work on the St. Joe River.

5) Preliminary Briefing for Presentation of Project Planning Spreadsheet for the Bunker Hill Superfund Site 2012-2011: Commissioner Dan Opalski (EPA) provided comments pertaining to the challenging interests of the funding process, other constraints, and the need to factor everything in when making decisions. He is looking forward to today’s discussion and hearing people’s input. The BEIPC Executive Director, Mr. Terry Harwood, thanked the EPA, Mr. Bill Adams, and staff members for developing the spreadsheet and their openness to work with everyone.

6) Special Announcements: Mr. Bill Adams (EPA) said that he wanted to recognize an award being presented today at a Wallace Chamber meeting to Jim McReynolds of the Wallace Mining Museum by Idaho State Senator Joyce Broadsword. The Idaho Historical Records Preservation Award is not only for the work that Jim has done, but also for Troy Lambert documenting work at mine and mill sites. EPA now has a Facebook site at: <http://www.facebook.com/CDAbasin>. For the ROD Amendment, EPA is waiting for letters of concurrence. The document will be posted on EPA’s website after it’s signed. Copies will be distributed at various locations and CDs will be available upon request. He introduced Ms. Rene Gilbert as the new community liaison reporting to EPA and said that she will also have CD copies of the ROD Amendment. Mr. Terry Harwood informed everyone that the paved roads strategy was done.

7) Presentation of Project Planning Spreadsheet for the Bunker Hill Superfund Site 2012-2022: Mr. Adams provided some background about the presentation and the order of the topics.

- *Sources and Costs of Funding*
- *Trust and Special Account (SA)*
- *Spreadsheet*

- *Different Approaches*
- *Commission Input*

He relayed that the CDA Work Trust was created with settlement funds from the Asarco bankruptcy and can only be used for cleanup work outside of the Bunker Hill Box Operable Units 1 and 2 (OU1 & OU2). The Trust is managed by the Trustee, Dan Silver, to maximize the value and carry out the actions selected and approved by the EPA. Through the course of the Basin Commission work plan, EPA gives the Trust a work plan or directs the Trust with the activities they want them to complete over the year with the amount of funding to be spent. Then they come back with a plan. The funding consists of the General Work Account, Special Work Account and the Custodial Account.

The Trustee, Mr. Silver, made a presentation about the investment strategy. The investment of the Trust is independent under federal and state law, and EPA has no part in the investment strategy. As the Trustee, he is obligated by Idaho State law to utilize a highly diversified investment scenario under the Idaho Prudent Investment Act. The Trust needs to grow the investment over the decades, so that it can accomplish the purposes of the first ROD and the presumptive ROD Amendment. He discussed the different investment scenarios and indicated that there is a high degree of risk. However, he does not want to back off the risk until he feels comfortable that they will have enough funding to take care of both RODs.

Commissioner Opalski brought up that he wants to make it clear, in terms of the details of the investment, etc., that this is the Trust's business. The Trust has the flexibility to think about a range of investment strategies to take advantage of the opportunity to realize an upside. If so, then EPA will have the ability to fund more work and have more independence to work with everyone to figure out how to make those decisions at the regional and local level. If they don't realize an upside, EPA will be going back to EPA Headquarters faster to get more support for appropriated funds.

The various accounts include the General Account which is the one used to do general remediation work. The Special Work Account is used for work on environmental activities, but EPA must also consult with the Natural Resource Restoration Trustees although EPA is still the decision maker. The Custodial Account contains property and is a set amount of money that is used for certain administrative activities for managing the Trust owned property.

Mr. Adams explained that the Special Account (SA) money from the Hecla settlement can be used anywhere in the Basin or Box for cleanup related activities. However, the Trust money can only be used in the Basin. So the SA money is the only current source of funding for cleanup work in the Box. EPA has to be careful how they manage the SA money because that is all they have to work with and they don't receive any appreciable interest on it.

The Court Registry Account is money that they have also set aside from the Hecla settlement. The goal is to use it for the ongoing operations of the Central Water Treatment Plant (CTP) in the Box. EPA is working with the State of Idaho to see whether they can work out an agreement for the operations and the money would be transferred to the State, but they are still working on this issue. If an agreement cannot be reached, then it would roll back to EPA and be placed in a

SA to be used for a variety of uses including the long term operating of the CTP. He indicated that there are still some deposits to be received yet from the Hecla settlement in the future.

In terms of other EPA appropriations, EPA has received funds from EPA Headquarters (HQ) for a long time for remedial actions and ongoing funding for design and support. However, this year EPA received zero for this site. EPA Region 10 will continually seek additional funding and that will be a factor in terms of timing of work and what gets done, and going back to HQ to supplement the settlement money that they have received.

Commissioner Opalski commented on the issue of a SA versus a Trust. In the Asarco settlement, EPA had a unique opportunity under the law to consider the use of a trust in the context of the bankruptcy. The Hecla settlement did not provide the opportunity to set up a trust, but EPA was able to put money into a Special Account (SA). It allows the use of putting money into a SA to be focused on the site where the settlement occurred, rather than the money going back into the US Treasury. Nationally, EPA is under scrutiny by Congress when asking for money because there are special accounts that resulted from settlements all across the country. It does constrain EPA regionally in terms of being strategic and spending as they have to project how they are going to spend the SA money. EPA HQ is expecting them to use that money on cleanup work that otherwise may require appropriated money, so they are looking for that trade-off.

As an introduction for the spreadsheet, Mr. Adams said that it was developed to respond to the questions that were brought up at the last Basin Commission meeting such as what are the major costs of things and the major sources of funding for this particular work. He emphasized that the rate of expenditures in the spreadsheet was not held to maintain a particular SA or Trust balance. As everyone can see, the SA goes into the hole after a number of years. This was no surprise for EPA because if you start drawing out funds in that account for activities, there are not enough funds. So they have to look at how long they can make that account last and at what point would they would have to ask for additional appropriations to supplement that money.

He noted that human health projects remain the highest priority. In addition to the high priority projects, water treatment projects in the Box and Basin are very important including OU2 groundwater collection work and upgrading the CTP to manage the additional water and bring the CTP up to current standards along with ecological source area cleanups. EPA also wants to continue to make progress in the Lower Basin leading to pilot projects. EPA has been collecting data in the Lower Basin to support this work. This information provides a better understanding of fate and transport of contaminants to help move into some pilot projects; and eventually completing a further Lower Basin decision document.

Alternative spending scenarios were discussed such as completing the work in the Upper Basin quickly. This would entail spending approximately \$10 million per year for the first five years and then \$25 million per year until it's completed by 2036. One of the problems with this scenario is that there will be very little funds remaining in the Trust for the work in the Lower Basin. Another scenario is to go slow with the work in order to grow the Trust. It will take longer to complete the work in the Upper Basin under this particular scenario, but there may be resources that remain for the Lower Basin if investments prove out.

Mr. Terry Harwood commented that one of the things he has been concerned about is that the SA account is the only source of funds for work in the Box. So if we're going to finish the work in the Box, and not depend upon EPA HQ, we're going to have to make sure that we save enough of the SA account to cover all the potential Box expenses. He suggested that we need to make some changes for how we do things and do it quickly because every year we use up money in the SA that is only available for work in the Box.

Mr. Adams reviewed examples of the other scenarios and some of the trade-offs in spreading the work out and how challenging this is. He brought up factors in EPA's spending plan and suggested that it's inevitable that they will need to shift the property remediation program to the Trust as there is not enough money in the SA account. There are also high priority needs in the Box where they have no other source of funding as well as the Operation and Maintenance (O & M) associated with these projects. So they need to resolve how fast to deal with this as they have to set aside the money from all these projects in an O & M account within the Trust and not touch it.

Commissioner Cantamessa asked if there was an alternative with a higher percentage that would allow more spending and protect against a potential downturn, but still keep the Trust intact. Commissioner Opalski responded with three key points that EPA is focused on. For property remediation on a large project, they want to be operating in an adaptive management mode to get the most "*bang for the buck*". For the Lower Basin, they need to look at the nature of the program and how they are aligning with the objectives since some properties may be much larger than in the Upper Basin.

Regarding O & M, if EPA is in the position of needing to guarantee the O & M function going forward for work, it means that they will need to figure out how to wall off a bigger portion of the Trust to be available to provide that O & M. For instance, one of the concepts with the Trust is that anything the Trust touches, the Trust will take responsibility for over time. That is one way it has been framed. Typically at sites where EPA is spending appropriated dollars out of Superfund, there's the match requirement and the state would be required to provide assurances before EPA would spend any of those cleanup dollars. Legally, the State is not required to do that where the Trust performs the work, but how does it look in terms of how we make sure we have an O & M component that doesn't trim back the overall ability to do work.

Lastly, at some point EPA is going to have to go back to talk to HQ for appropriated dollars and what does that renewed stream of appropriated dollars look like. As they prioritize human health work here, the difficulty with EPA Region 10 and the Basin Commission is that it's the same hierarchy established for funding nationally. So we are lowering our ability to get appropriated dollars as we get through with human health work as there are more needs than funding. The other part of that is a hierarchy of human health risks over ecological risks at sites across the country. In the last decade, they have not been able to fund work to address all the human health risks in any given year and that list gets re-racked each year as new problems are discovered. Even if you were close one year for funding; you could be bumped back down the next year. So, if we are effective doing work with other resources, that means when we go back for more money to take care of ecological risks, then it's going to be dealt with at a lower level nationally.

Commissioner Green suggested that we need to make a decision and move forward, rather than to continue looking at alternatives.

Break

8) BEIPC Discussion of Project Planning Spreadsheet for the Bunker Hill Superfund Site 2012-2022: The Basin Commissioners and staff participated in a discussion of the spreadsheet and funding scenarios. Mr. Harwood said that they are going to try to figure out the work for the next year and potentially the next five years as the BEIPC has to prepare a one and five year plan for the November meeting. Commissioner Cantamessa asked if there was the potential to do another workshop between now and November as he did not think there would be enough time today to discuss everything. Mr. Harwood indicated that it was up to the Commissioners.

Commissioner Cerner said that one concern he has about all the analyses laid out here is that in looking in the next 10, 20, 30 years in the future, we have the Lower Basin that still does not have a ROD. We have an idea that something needs to be done, but no price tag. When that hits the table that will be the time to re-evaluate depending upon the magnitude of what is contemplated in the Lower Basin. He agrees the discussion is going to go on for a long time, but he likes what he hears about adaptive management and getting some work underway. He's also concerned that we may not have the full picture of what we need to do at this time for the whole Basin and we need to see how the fund grows.

Mr. Harwood recommended that the BEIPC focus a little better on the five year work plan especially when you see everything spread out like this and we need to fund this work.

9) Public Comments: Mr. Bill Rust (Shoshone County TLG Rep.) said that he thinks this is a good discussion that needed to happen. He has one real concern about assuming that inflation of the remedial projects is the same as the general inflation all over. It's a very dangerous assumption as he just read an article about a project that was supposed to cost \$5 billion dollars, but now it's about \$7 to \$8 billion. He would encourage doing a sensitivity analysis to see what percentage of work can be done. When doing one hundred year forecasts, a two percent inflation rate can have huge impacts in the long run, so he suggested it be incorporated into the models.

Ms. Bonnie Douglas (CCC and LBC Member) commented that the LBC is doing a series of educational sessions about the Lower Basin and the more she hears about sediment loading and contaminants in the water from Cataldo to Harrison, she thinks that some pilot projects need to be done. The LBC will have a meeting on September 17 in Harrison and they would like to start talking about some of these projects so that the public would have an opportunity (other than these formal sessions) to suggest ideas for areas in the Lower Basin that need to be elevated in priorities. She raised the issue of contaminants continuing to flow into the Lake when there are high water events. The citizens know studies are needed, but there are pilot projects that could be done now to help with stabilization and make some progress in reducing sediment loading.

Ms. Jann Higdem (Idaho Women in Mining) brought up the 2005 National Academy of Science (NAS) report on the CDA Basin and remarked that she doesn't believe that EPA has read it or considered their recommendations. First, there is a difference between lead sulfide which is naturally occurring and what the miners are mining; and lead oxide which is what the Bunker

Hill smelter released into the air. The NAS report said this speciation would directly affect the remediation necessities. The report also said that EPA and DEQ do not remediate in a permanent manner as to take into consideration the flooding that occurs here all the time. She suggested that it means they will be here forever as long as they don't consider this in their remediation plans.

She made a reference to page 414 where the EPA said in 2004 that in the case of large mining sites where remediation may involve many decades of sequential remedial actions and institutional controls; that it may be required in perpetuity and there will never be a final remedy. The report said that EPA has the power through CERCLA to reduce the ARARs (Applicable or Relevant and Appropriate Requirements) or measurements, so that we could do remediation without breaking anybody's bank, especially the State. On page 418, it indicates that the Federal government pays for 90% of the construction costs with the State paying the other 10%. However, the State is solely responsible for paying all the O & M costs starting a year after construction is declared to be complete. She said that the incentives for the State have a potential to be biased because in the remediation selection process, the State must concur with the selective remedy. She mentioned that EPA had said earlier in today's meeting that the State did not have to concur, but the State must concur.

Mr. David Fortier (CCC and LBC Member) who is also involved with the Kootenai Shoshone Soil Conservation and Water District (KSSCWD) said that one of his concerns is that he hopes there will be some earlier discussions with the CCC instead of waiting for the one year work plan. He commented that the CCC has not been able to advise much in the past, just rubber stamp. He also thinks that we need some general public comments on the cash flow and some of the other issues to get input into the annual work plan other than by just the TLG. The citizens are very concerned about the Lower Basin and he does not feel that the human health aspects have been as well defined there as they should be. He thinks there needs to be discussion on the Lower Basin property cleanups sooner than later as it's not very clear to people what the expectations are. People want to see things done there and they are very concerned that work will be lined up at other sites and the Lower Basin will be shortchanged. He suggested that it's important to try and move forward in the next year to communicate these things.

Ms. Katie Brodie (Citizen) asked for clarification about funding for the remediation of the roads and if the money would go to the municipalities themselves to decide how they are going to fix those roads. Mr. Adams replied affirmatively. Mr. Harwood said that a few people have asked him about the strategy and he will email it upon request. There is also an application form to fill out for the nine road jurisdictions that they are dealing with.

Mr. Troy Lambert (CCC Vice-Chair) inquired about the information based in the spreadsheet and that it appeared the property program was not going to be done by the Trust before the spreadsheet was developed. Mr. Harwood said that was correct. Mr. Lambert asked if it would help if the property remediation program was moved to the Trust and Mr. Harwood agreed.

Mr. Jerry Boyd (CCC Chair) announced that the LBC will have a field tour on August 18 to look at some of the Lower Basin concerns.

10) Special Planning Meeting Discussion: The Basin Commissioners discussed the possibility of scheduling a special planning meeting before the November BEIPC meeting and the logistics of trying to involve the CCC and LBC earlier in the process with the TLG, so that they can make comment before decisions are made. Ms. Stevens (TLG Chair) brought up that it's the Chair's position and responsibility to communicate between the TLG and CCC; and now the LBC is part of the group. This is part of the Chair's job with the various groups, so there is a spokesperson if the citizens cannot make it.

Mr. Adams informed everyone that a draft implementation plan will be released about the same time as the ROD Amendment. It will provide some of the strategy identified as priorities and will talk about the adaptive management process. So there will be an opportunity for comment on the draft implementation plan. They will also be working it through the Upper Basin PFT as they have done in earlier versions of the adaptive management process. Ultimately, they would like to have that document reflect these longer term visions and plans, but given that there is a lot of discussion that needs to occur, it won't include all of that yet. However, the goal is to update it on an annual basis and have opportunities for public comment.

Mr. Boyd announced that the next CCC meeting will be October 10. (*Editor's Note: This was later rescheduled to October 17, 2012*). He also offered to have other special meetings.

Commissioner Cantamessa said that he thinks the Basin Commissioners have the same motives going forward, but their priorities will vary a little bit from person to person and agency to agency that they represent. Hopefully, they can pull everything together and come up with the best compromise at least to start out with. Mr. Harwood suggested that if any one individual has suggestions from the presentation today based on the spreadsheets and other information, to send them to him at the BEIPC. Commissioner Cantamessa conveyed that from Shoshone County's viewpoint, they are very interested in some of the high priority projects that need to be done in the Upper Basin, but are also very interested in seeing the Trust fund preserved to the point that the Lower Basin projects can continue for a long period of time.

Commissioner Jack Buell (Benewah County) indicated that he is very concerned about the Lower Basin as he thinks we are sliding by not doing some work down there. Commissioner Cantamessa suggested that Commissioner Buell would like to see rip rap there and so does he.

Commissioner Opalski commented that he wanted to underscore a few thoughts before going forward into the next special meeting and maybe alleviate some concerns. There's still a core of work that in the very near term they are planning to move forward with and that will be reflected in the implementation plan. There are some things that they have queued up and are committed to, so the question is what pace they move those, how many do you take on at the same time, what are some trade-offs, etc. He also wants to make it clear about the issue of getting a pilot project going in the Lower Basin as that is something EPA has been thinking hard about.

Commissioner Fransen said that he would be supportive of having another meeting as he does not think we got to where we needed to be today. He asked confirmation from Commissioner Opalski if it's as important to EPA for the outcome of those deliberations in terms of setting priorities and coming up with 1, 5, 10 and 15 year plans. It's not so much an issue with the one year plan, but it does matter for what we are going to be doing in the next 5 and 10 years.

Commissioner Opalski thinks that all this input is really important to us as we think about those very questions, but the caveat is that a number of us have referred to this in different ways and he thinks that you establish the trajectory and move forward on it. Then you keep looking at the inputs and seeing if you can make adjustments with the expectation that as conditions change, EPA is going to try and make appropriate decisions and revisions to all of that. He thinks that we make better decisions when we get input from the people who care about what's going on and he's interested in hearing that input to make those decisions.

Mr. Harwood said that one reason he was emphasizing the one year plan for a certain extent is that we are required by State Statute. However, the other thing is that he thinks there are some decisions that need to be made within the next few months as to what we are going to do with some of those projects that are tapping the SA account. We can't wait another year or two or we'll reduce the SA account to the point where we will not have enough saved to take care of the groundwater problems in the Box. We also need to figure out all the different taps on the SA account or we'll have another year of taps and another \$25 to \$30 million out of the SA account that we may have a lot of difficulty re-establishing in the future.

11) Adjourn: As there was no further business, Commissioner Cantamessa adjourned the meeting which was followed by the BEIPC field trip.