

Basin Environmental Improvement Project Commission

Meeting Summary: December 4, 2002

Meeting Location: Dept. Health and Welfare, Kellogg, Idaho

Commissioners present: Steve Allred, DEQ (via telephone)
Sherry Krulitz, Shoshone County
Chuck Matheson, CDA Tribe
Dick Panabaker, Kootenai County
James McCurdy, Washington
John Iani, Federal Government

Commissioners absent: Jack Buell, Benewah County

Staff present: Luke Russell, IDEQ
Phil Cerner, CDA Tribe
Sheila Eckman, EPA

Note taker: Luke Russell

Summary:

Chairman Krulitz opened the meeting at 11:05 AM.

Old Business

The meeting summary from the October 23, 2002 meeting was reviewed. **The summary was approved without modification following a motion from Commissioner Panabaker, seconded by Commissioner Matheson.**

Luke Russell provided an update on the initial \$2M dollar grant request indicating both the EPA and DEQ grant writers had reviewed the wording and the application was being processed. He indicated that the funds could be available for Commission use in late January or early February.

The Commissioners reviewed and accepted letterhead prepared by staff for Commission use.

New Business

1. Technical Leadership Group. Luke Russell presented an update on activities of the Technical Leadership Group (TLG). The group is working on protocols for their operations, which will include, among other provisions, considerations on membership, the establishment of a chair and vice-chair to be rotated amongst Board member organizations on the TLG, meeting agendas and decision making, and communication protocols for reporting back to the board and communicating with the Citizen

Coordinating Council (CCC). The TLG proposed that it post their meeting summaries on the Basin Commission web page and once the CCC selected a chairperson that the leadership from the two groups meet and discuss how best to communicate.

Also presented was an update on the TLG's meetings on November 19-20 in Coeur d'Alene. The first day involved presentations by the various governmental entities on the work and pilot studies in progress for the Basin. A three-ring binder has been prepared with project summary sheets that will be updated as projects advance. On the second day the TLG proposed developing the short-term work plan for presentation to the Board in February 2003 following discussion with the CCC. The long-term plan would be prepared and presented to the Board in August 2003.

The TLG created Project Focus Teams to begin work on general categories of projects and included:

- Project Prioritization Criteria,
- Monitoring/Data Management
- Human Health
- Streambank Stabilization
- Water Treatment
- Lower Basin Flood Plain
- Upper Basin Source Areas
- Rex Mine
- Lake Management (including education)

These groups will meet in early December to begin development of the work plan(s).

Mr. Russell advised that the TLG, through the Project Prioritization PFT, is working to establish an objective system for ranking projects for inclusion in the various work plans. Some of the criteria that have been proposed includes: if the project was identified in the Record of Decision or Lake Management Plan, environmental/human health performance, recontamination potential, implementability, practicality, funding, and community interest. He indicated the TLG intends that the CCC would be asked to provide input on the matrix with particular emphasis on the Community Interest Criteria.

The next steps for the TLG will be to bring their proposed operating protocols to the next Board meeting for consideration by the Board, complete the ranking criteria and short term work plan by February.

Luke Russell mentioned that the USGS proposed to contribute \$100,000 to the Commission for Basin monitoring under a potential match as long they perform the work. This could increase the funding available for lake monitoring. Staff was directed to get a clarification on whether the CWA grant money would qualify for such a match.

Commissioner Krulitz advised that Bob Launhardt one of the Shoshone County representatives to the TLG had resigned. Mr. Russell advised the Board that the City of

Coeur d'Alene had proposed Sid Fredrickson be included on the TLG, and the City of Post Falls had proposed Daryl Holling. Commissioner McCurdy requested that Stan Miller from Spokane County and Lloyd Brewer, City of Spokane, also be included. The Commission felt these individuals would be appropriate additions to the TLG. Commissioner Krulitz commented that the TLG was had now over 30 members and wondered if a group this size could effectively get work done. Mr. Russell indicated that the PFT's would be smaller more workable subgroups to the TLG. Commissioner Allred reminded the Board that TLG representatives should have a technical background.

Mr. Allred then questioned if there was a representative from the Corps of Engineers on the TLG and was told not at this time. Mr. Ed Moreen, with the Corps was in the audience and indicated that he would be willing to serve on the TLG. Commissioner Krulitz commented that the Corps of Engineers has regulatory authority, especially with regard to streambank projects, and this experience would be helpful to the Basin Commission.

Commissioner Panabaker indicated that the county representatives on the TLG would need to have expenses reimbursed somehow.

2. Citizens Coordinating Council – Phil Cernera, ~~with the Coeur d'Alene Tribe~~ updated the Board on the efforts to form the CCC. He reviewed the functions of the CCC which are to support the Board in implementing the Record of Decision, provide comment on the short and long-term work plans and project specific projects, provide a direct voice to the Board to convey the range of citizen concerns and perspectives, and to do community outreach. He indicated that a formation meeting was held on November 13 and nearly 60 people, including two Basin Commissioners, attended. The general theme of comments made by those present at this meeting included:

- CCC may be duplication of what already exists in the basin
- Will their voice actually make a difference in Board decision-making?
- Rails to trails issues, while beyond the scope of the ROD, remain a concern
- This is a new beginning and the only alternative to an EPA lead clean-up
- The Lake Management Plan revision needs more public review
- How will the CCC coordinate with the Board, the TLG and the PFT's?
- Will there be funding to support CCC efforts?

It is envisioned that the CCC would select a Chair, Vice Chair and small integration group to help guide their efforts and that Ross and Associates would continue, in the short-term, to facilitate these meetings. Also presented were ways on how the CCC can interact with the TLG and Board. This included adding a regular CCC report on the Board meeting agenda, access to the TLG information posted on the web page, and that once the CCC leadership was selected, meet with the TLG leadership to discuss how best to communicate, and coordinate activities of the two groups.

The next meeting of the CCC, and first official meeting, will be on December 12, 6:30 PM at the Kootenai County Courthouse in Coeur d'Alene. Commissioner

McCurdy requested that the meeting summaries from the CCC be included in the Board meeting packages.

Commissioner Panabaker, who attended the November 13 meeting, commented that there had been no board discussion on the size of the CCC, only that the Board needed this group to advise them going forward. He indicated this group was still open for participation. Commissioner Krulitz commented that with over 60 people this was already a very large group and didn't want to see one group dominate. She commented that the CCC needs to focus on the Board's scope, which is to implement the Record of Decision.

There was a question from the audience asking if the CCC could participate on the weekly TLG telephone calls? Sheila Eckman replied there were phone line limitations to the number of people that could call-in and there were over 30 already on this call. Kathy Zanetti commented that there were already some TLG members participating with the CCC, which should help communications between the two groups. Toni Hardy requested that these weekly calls be taped. Commissioner Iani commented that the TLG, Board and CCC needed to coordinate their agendas. He added, if the CCC can nominate a chair the chair may be the logical person to participate on weekly TLG calls, but this decision should be the responsibility of the CCC leadership. However, participation on these calls by the CCC should be consistent and not rotated.

Following this conversation, Luke Russell indicated there were 8 people that had submitted applications for the TLG who had not been appointed. He proposed that staff contact these individuals for their interest in participating on the CCC. The Board supported this proposal.

3. Board Operating Protocol

Sheila Eckman presented an update on staff efforts in developing operating protocols for the Board. These protocols/policies would address the Board authorities and scope, meetings, function models, fiscal policies, staffing, and interim fiscal management. The Board has broad authorities under the Idaho statutes (39-8106) and its scope is to implement the Record of Decision(s), coordinate the Lake Management Plan implementation, and address North Fork mining sites.

The protocols being developed will also address Board meetings and open meeting law requirements, the meeting schedule, special and executive sessions, TLG and CCC reports, opportunity for public comments, development and posting of meeting summaries, and the use of web page announcements.

It was proposed that the board develop a schedule of regular meetings for a quarterly basis, which would be February, May, August, and November. The Board agreed with the provision that they may call a meeting at any time based on the issues at hand. **The Board established a tentative schedule for meetings next year to be February 26, May 28, August 27, and November 12.**

Ms. Eckman then continued on the protocol's development, which would include considerations for use of alternates. She indicated that responsibility for appointment of an alternate rested with the appointing entity (e.g. Governor of State of Idaho, Tribal Chairman, etc). She indicated that the allowance for electronic participation as Commissioner Allred was using today, could reduce the need for alternates but a provisions in the protocols was still considered important. Commissioner Panabaker commented that he preferred electronic participation rather than see alternates used.

The protocols would also address decision making (with a quorum of at least 4 board members), voting, (per the statute), proxies (not envisioned), use of Robert's Rules of order, and provisions to act on good faith. Ms Eckman also indicated that the protocols would discuss the Board chair serving with a two year term, establishment of an alternate chair, staff support for the Commission, and record retention, among other provisions.

At this point, Commissioner Allred indicated that he would need to sign off, but before doing so, advised the Board that the State of Idaho was in the process of receiving property in the basin from the EPA, which included the current DEQ office building and lands of interest to the Eagle Crest Development. He indicated the City of Kellogg was interested in the current office and may be leasing office space back to the State. In addition, there would be space in the building available for use by the Basin Commission. He indicated for both properties, if there were a transfer from the state to these entities a public process would be followed.

The Commission then took a lunch break at 12:30 PM

The Commission reconvened at 1:00 PM without Commissioner Allred.

Luke Russell then made a presentation on fiscal policies development which included a review of the various functional roles the Board would be playing in implementing it's work plan in the Basin. This would include both a direct implementation role (direct contracting, staffing, construction oversight, etc) and a coordination role where other entities would be implementing projects. In the implementation of it work plan, the Board would be in both roles.

In developing fiscal policies the Board would need to consider the funding sources which Mr. Russell indicated would include: CERCLA, Clean Water Act, Federal appropriations, State contributions and potentially in-kind services. The procurement and accounting process would need to be consistent with the funding source.

He then presented an interim financial management approach with DEQ providing services to the Commission. The DEQ has the infrastructure to receive federal funding and has offered to provide this service at no cost to the Commission for the first \$2 million grant. This would include accounting, procurement and disbursement of funds to other groups as the Commission may direct it. It is envisioned that the DEQ and the

Commission would enter into an interagency agreement to clarify this role and service to the Commission.

Phil Cerner commented that the Board would need to make a future decision on the actual entity that would manage these projects and that an agreement may be needed between DEQ and that entity to actually implement the work.

It was moved by Commissioner Panabaker, seconded by Commissioner Matheson, to have IDEQ accept and manage the funds for the \$2 million CWA act grant. The motion passed with 4 votes, and Commissioner Iani abstaining.

4. **Legislation.** Curt Fransen with the Idaho Attorney General's Office discussed potential legislation changes to the Idaho Basin Environmental Improvement Act (39-8106). He handed out a proposal that would clarify the role of all Commissioners' to establish annual budgets and work plans. This would address the concern of the county and State of Washington representatives that were not included in this function under the original statute.

Mr. Fransen indicated that there was also potential legislation being discussed to address the fiduciary responsibilities and potential conflict of interest considerations for the Board members. While no language has yet been developed, this change would clarify that while primary duties of a Commissioner is to their appointing entity, they can participate on Board actions if this has been disclosed to the Board. Once language is developed it will be distributed to the Board for review and input, prior to submission to the legislature.

Commissioner Krulitz asked who would be carrying this language in the legislature. Mr. Fransen replied that this would be a Governor's bill and they would request a representative to carry the bill, which most likely would be a member from the Governor's party

5. **Public Comment** – Kathy Zanetti (citizen) commented there is an opportunity and need for this Commission to re-build trust with the community. The Board needs to be sensitive to the commitment of time citizens are putting into this Commission (they are not paid) and the Commission needs to give 100% at its meetings. She commented that breaking for lunch and allowing public comment only at the end of the meeting was not appropriate. She also requested the board consider continuation of monthly meetings to help re-build the trust lost over the many years of fighting on the basin cleanup issues.

Commissioner Iani commented that the Board should consider allowing public comment after major board agenda items and Chairman Krulitz requested future agendas accommodate this request.

Toni Hardy (citizen) requested clarification from Sheila Eckman on her presentation in regard to public comment and why EPA didn't make responses to public comment available to the public. Ms Eckman responded that in her presentation she was referring

to the Board establishing in its protocol the need for public comment at each meeting, not how any formal public comment would be handled by EPA. Ms Hardy followed up with a comment that the public should be a participant on the weekly TLG telephone calls. Commissioner Krulitz commented her husband was on the TLG calls and she was able to get information from him.

Commissioner McCurdy offered that from his perspective there were four main items of citizen interest that needs to be addressed in the various protocols being developed:

1. Access to the TLG and their conference calls
2. Interaction between the TLG and CCC
3. Interaction between the Board and TLG and CCC, and
4. The CCC's relationship to the general public.

At this point, Chairman Krulitz introduced the congressional representatives aids in attendance including Dan Whiting and Sara Bigger and apologized for not having done this sooner in the meeting.

Roger Hardy (Benewah County TLG representative)questioned how any interest earned by money provided to the Commission would be managed before it was spent. Rob Hanson with DEQ responded that the funds did not generate interest because they were not physically held prior to use. Rather, the funds were typically held by EPA and wired when needed to reimburse contractors.

Mr. Hardy then questioned the timing for public comment on the Lake Management Plan and process for going to the legislature for their action. Phil Cernera responded that the Tribe was finishing their edits on the draft and would be providing to DEQ in the next several days. He then expected a draft to go out for public comment that may be as long as 90-120 days. Luke Russell added that if this were the schedule then there would be no legislative action on the plan during this session.

Bret Bowers (CLEAN) commented that there was originally a push to get the plan completed so the legislature could act on it this legislative session and that getting the updated plan complete was important for moving forward on getting the lake deleted from any Superfund listing. Mr. Cernera replied that it was not on the Tribe's timeline for any legislative action on the Plan. Mr. Bowers then asked if the Board was willing to sacrifice a whole year before going to the legislature on the Lake Management Plan. Commissioner Panabaker commented there was no priority mentioned to him on going to the legislature this year. Chairman Krulitz requested an updated copy of the Plan be provided to the Board as soon as it was available.

Randy Siemers (labor) commented that in the process of selecting an executive director it would be helpful if the public would have a chance to meet and talk with the candidates prior to a Board selection. Chairman Krulitz commented that it might make sense to have a CCC and TLG member on the selection committee.

Roger Hardy then suggested that the Board's fiscal policies should address potential funding from potentially responsible parties (PRP). Cara Steiner-Riley, attorney with EPA, indicated that if there were settlements with PRP's this would be considered federal funds and then potentially available from EPA for work in the Basin.

Bill Rust (Shoshone County TLG and CCC member) commented that the scope of Board activities presented earlier should also have included Phase II of the Bunker Hill box to address water quality. Sheila Eckman responded that he was correct and this was inadvertently left off her slide on the Board scope of activities.

The Commission's next meeting will be February 26, 2003 beginning at 1:00 PM at the Kootenai County Courthouse in Coeur d'Alene.

There being no other business, the meeting adjourned at 4:05 PM