

**Minutes**  
**February 9, 2009**  
**USFS, Kalispell**

Ed Heger opens meeting and introductions commence. Attendance is taken to ensure that a quorum is present. Based upon those in attendance, it is determined that a quorum is present.

Caryn Miske requested the FBC members to assist with in-kind accounting which would consist of keeping track of time spent attending FBC related meetings, and work undertaken on behalf of the FBC. Caryn handed out forms for the in-kind accounting and asked the members to track their hours as back as far as they can (2008 and 2009) in recording time. Alternatively, members may complete form at each meeting going forward.

Ed Heger asked for comments related to the minutes from last meeting. No comments offered. Jan Metzmaker makes a motion to approve, Jim Simpson seconds and the minutes pass.

Ed Heger announces a slight change in the agenda. The Columbia River Treaty Presentation was bumped up on the queue.

Two action items from the last meeting were then considered.

First, the members discussed whether a 501(c)(3) should be approved. Jim Simpson asks about rules new IRS rules. He was uncertain as to the effective date, but he did not expect the new rules to be a show stopper. Caryn Miske agreed to check the rules assuming the Commission voted to move forward with the 501(c)(3).

Caryn Miske stated that the subcommittee recommended proceeding pending a member vote. Caryn also explained the proposed structure of the 501(c)(3) which would be similar to the University of Montana set –up. The DNRC attorney supported that type of structure.

Ed Heger explained that the goal of a 501(c)(3) would be to be ready when opportunities present themselves.

Tom Smith moves that the FBC proceed and Jan seconds.

Passes unanimously.

Second, Ed Heger brought up a house keeping issue. The FBC has worked on, and is continuing to work on, facilitating the passage of SB 343 – the aquatic invasive species bill. The FBC previously approved the concept of the bill, but a vote was needed to affirm support for SB 343. The bill has been heard in committee and is moving forward.

At the request of Tom Smith, Caryn Miske outlined the contents of the bill. Caryn explained that the terrestrial invasive components were stripped out of the bill to get the support of the Farm Bureaus and Stockgrowers. The funding for the program will be funneled to the Dept. of Agriculture, and it is expected that the Dept. of Agriculture will enter into a cooperative agreement with FWP to actually implement the provisions within the bill which provided for wash stations, checkpoints/inspections, and an increased enforcement ability.

Tom asked if the bill is permissive or mandatory in nature. Caryn stated that certain sections of the bill still contained “may” rather than “shall.” She then explained that she did not lobby for the change from may to shall in front of the Senate Agriculture Committee due to her desire to get the bill out of Committee, which is dominated by Senators from the Eastern part of the State. She also explained that text changes can still be made when the bill goes to the House Agriculture Committee.

Caryn noted that the bill is moving very fast and was passed on the Senate floor in a 47-3 vote. The bill will now proceed to the Senate Finance Committee.

Tom then asked if the funding in the bill was adequate in the opinion of biologists. Caryn said no, but noted that she cannot, as a State employee, testify in front of the Senate Finance Committee and request more funding. Caryn can only testify on the contents of the bill and what is already in the Governor’s budget. It was also pointed out that citizen members could testify as to the need for additional funding.

Tom asked what the cost would be for a statewide program. Caryn said the bill is designed to target critical areas and would not provide coverage for the entire state. She also noted that FWP have already done surveys on boat traffic, and FWP would likely focus on those areas first. As more funds were obtained, more check points could be added.

Tom pointed out that the FBC is the body responsible for the Flathead, and that something needed to be done because once they get in there is no getting rid of them.

Caryn agreed and explained that the bill would primarily provide the umbrella or framework for the program, and would allow the agencies to engage in rule-making. With the existing funding, only a relatively small part of the State would likely be covered, and if the FBC wanted a comprehensive, Flathead specific program, more resources would likely be needed.

Tom then asked what we can do as a group to eliminate this threat.

Caryn explained that \$330,000+ was now in the Governor’s budget, which included \$33,000 for enforcement. She also noted that the bill would allow the Governor to tap into a \$16 million emergency fund if needed.

Ed Heger intervened explaining that at this point, the first step is to get the bill passed, and that this is our number two priority behind the industrialization of the BC flathead.

Motion made, discussion had, call for the vote. Motion passes unanimously.

Jeff Harris gave the Flathead County planning and land use update, and he handed out the year end report from the Planning Office.

Jeff explained that the County is now upside down in that there are more lots than demand for home construction. Currently, 30,000 available lots in the unincorporated parts of the County. Not all on the lots are on the market for sale, but all are undeveloped. He added that last year the Planning Department saw a 30% decline in applications and fees as compared to 2007. He noted that they did not compare 2008 data with 2005 and 2006 data as development was out of control and not suitable for base line comparisons.

Jeff then explained the handout in more detail, and explained the difference between applications versus approvals. He also highlighted the following points:

- Average acres per lot shows an increasing trend
- Lake shore flood plain activities holding constant
- Flood plain regulations are currently being revised. Previously most of their effort focused on the flood way, but now they are also focusing on the 100 year flood plain
- Demographic trends indicate that the County is sustaining a 2% growth rate per year, and with Kalispell having 44% of the County's growth. Growth in Columbia Falls and Whitefish is more moderate, with the County falling somewhere in between the two. In part, the growth in Kalispell is due to an aggressive annexation policy on the part of the City.
- Riparian setbacks are part of the subdivision review process. Setback regulations were recently modified, removing proposed numeric setback requirements based on the order of water body. A site by site assessment is now required to develop a riparian management plan for each subdivision. A Committee has been appointed to review the functionality of the new setback regulations, and modifications are expected. A joint meeting with the planning board and County Commissioners will be held on 2/25 to discuss the setback regulations.
- Develop predictability mapping underway. The map will be released at a joint County Commissioner's-Planning Board meeting. If the County Commissioners approve the proposed predictability map, the Planning Department will ask the public to help set the drivers for determining densities in certain areas. The likely drivers would include presence of fire stations, local school capacity, emergency response capabilities, paved roads, etc.

Don Loranger suggested that the findings should be shared with the public, and the relationship between zoning and water quality should be explained to the public. He asked if data was available not only on the number of applications submitted, but on the number of applications submitted and the number approved.

Jeff said that the Planning Department tracks subdivision applications, but not zoning changes. Jeff then said that off the cuff, he believed the number of approvals equaled the number of applications submitted. However, he pointed out that typically the Commissioners require mitigation provisions to offset adverse impacts associated with subdivisions..

Tom Smith suggested it would be helpful for the Planning Department to look at water quality data as compared to subdivision submissions/approvals.

Caryn Miske pointed out that the impact on water quality would be difficult to accurately quantify for each subdivision as soil type, slope, etc. all factor into such determinations.

Tom Smith stated that growth impacts are right up there with ANS and coal development in B.C.. We have the data on water quality and we somehow. need to make the link to growth impacts.

Caryn Miske said that the shallow groundwater study to be undertaken by the FBC, along with lidar mapping in the flood plain and critical lands mapping will help in assessing such impacts.

Don Loranger said that the link between zoning and water quality needs to be made clear to the public, and it appeared that the rules for variances were being bent to a significant degree.

Jim Simpson wanted clarification on what such an analysis would prove. Don said that the County has rules, but it appears that the County is not following the rules and as a result subdivisions which impact water quality are routinely approved. Jim said that it could just a measure of how effective the regulations are.

Jeff said that the Planning Department does not see zoning requests for changes in stream side buffers. He agreed that the Department could pull out the rules that apply to water, and look at variance requests to those water related rules. He speculated that the number of such requests would be small.

Tom reiterated that this is an important issue.

Ed Heger reminded the members that the Executive Director's time is limited.

In response, Don Loranger volunteered to sit down with Jeff and identify the needed information and the areas of concern.

Caryn reiterated that trends in the number of variances, etc. would show whether the rules were working properly, and we could show development trends as compared to water quality trends, but cautioned that specific water quality impacts would be difficult to estimate until we can create a matrix to figure in the slope, soil type and other factors.

For specific sites such an approach works well, but given the current data, doing such an analysis over a larger area is difficult.

Ron Steg stated that the TMDL model that is being developed would give us loading data for various land use types on a large scale.

Robin Steinkraus said that she liked the big picture approach, tying the TMDL to land use planning. Robin said that we should find opportunities to do that.

At this point, the land use discussion ended, and a transboundary summary was provided by Erin Sexton. Erin said that Cline mine still has a lease for an open pit coal mine, but they have not had activity on this lease since 2007. It is her understanding that Cline is still in the preapplication stage of the B.C. environmental process.

Erin also noted that BP's coal bed methane project obtained a 10 year permit for work in the Elk. Tenure for the Elk was obtained in December 2008. She noted that BP did not get tenure for Flathead, but the Company is continuing to collect wildlife, water quality, and hydrogeologic chemistry data.

She also reported that gold (Max Resources) and phosphate exploration in Howell Creek and 29 mile creek occurred in 2008, and will continue in 2009.

That concluded that summary for the BC portion of the drainage.

Erin then reviewed the status of the Flathead Lake Biologic Station Contract with the FBC, as well as the federal appropriation. She noted that water quality monitoring was continuing in both the Flathead and the Elk. She said the 2007 and 2008 field season data for water quality, macroinvertebrates and periphyton is currently being analyzed for 8 sites in the Elk and 11 in the Flathead, and that a report will be completed by June 30, 2009. When the report is complete, a presentation will be made to the FBC.

The federal appropriation has allowed the research to continue and expand in 2009 as fisheries and wildlife is now included in the research comparing the Elk River which is located in a drainage that is heavily mined to the Flathead which has not been mined.

Kathy Eichenberger then provided a BC update. Kathy noted that Cline mine continues to show no movement, and Cline has remained in the preapplication phase for over two and a half years. She also pointed out that Cline has a time limit to get the necessary data to the Environmental Assessment Office. Cline could request an extension, but no such request has been made. Kathy said that B.C. does not see Cline as a threat at this time since there has been no movement, no indication of progress, no drill holes, and the Company still has not addressed the 2006 comments.

Kathy then provided an update on the gold exploration in the Flathead. Eastfield Resources has leased the right to explore for gold from Max Resources. They have

applied for 5 or 6 drill holes, but the exploratory permit for 2009 has not yet been approved. When the permit is approved, Kathy will get the information to Caryn Miske.

Kathy noted that no phosphorous exploration is currently being undertaken in the Flathead.

Kathy also said that the Ministry of Environment for the Province recently completed a fish assessment in Lake Koocanusa examining the impacts of mining on the fishery. She anticipated that the report would be available in April 2009 and asked the members if they would be interested in a presentation on the report. The members responded that they would welcome such a presentation.

Caryn Miske then reported that the Hal Harper-Joan McIntyre dialogue appears to be stalled. Kathy Eichenberger explained that B.C. is in transition between leadership, but that she would follow-up on why it stalled.

The Columbia River Treaty presentation was then made by Jim Barton. A handout was given to the Commission, and the power point presentation was also made available.

Kathy Eichenberger reported back that she had called Victoria and that the Provincial government was in fact committed, and looking forward to continuing a dialogue with Montana. This concluded the transboundary discussion.

Ron Steg and George Mathieus provided the DEQ TMDL update. Ron said that the EPA is providing technical assistance to DEQ. George stated that DEQ is preparing a series of reports for the Technical Advisory Committee, and that the DEQ Flathead TMDL website would be available shortly.

Clayton Matt then provided an update on the CSKT-MT water rights negotiations with Compact Commission. Clayton explained that the Compact Commission is due to sunset, and that the Tribe had introduced a bill to extend the life of the Commission. The bill would extend the life of the Commission for 4 more years, and then allow an additional 2 years to file claims with Montana Water Court. Clayton explained that such an extension would allow for a negotiated water rights agreement between the Tribe and the State, and that without the extension the parties would be forced to engage in litigation to resolve the water rights allocation. CSKT is hoping the legislation passes and that the Governor will sign the bill.

Caryn Miske then gave a brief Executive Director report, focusing primarily on SB 343. Caryn reported that SB 343 had passed the Senate Agriculture Committee, and passed overwhelmingly, by 47-3 in the first Senate floor vote. She noted that it is very likely that the bill will ultimately be enacted, and the fundamental questions now under consideration is the funding for the bill and the text changes proposed by FBC and others. Caryn reported that she will continue to work with Verdell Jackson and others to provide the necessary information to support this bill.

Ed Heger then gave the report from the Vice-Chair in Clint Whitney's absence. Ed reported that Bob Sandman has been working hard to assist the FBC in developing position descriptions (PD), and in getting these PDs classified. Aside from the Executive Director position, the FBC is developing position descriptions for a webmaster and a Public Information Officer/Volunteer Monitoring Coordinator. Ed noted that with the legislature in session, resources in Helena are stretched thin, and the positions are still awaiting classification. He also explained that the FBC would not be approaching the legislature to fund the webmaster and PIO positions, and that funding for these positions would be generated by the FBC. However, in the event that our base budget is challenged, the FBC will be prepared to justify the need for continued funding at the existing level. Ed will be working with Caryn Miske on a wish list for stimulus money, which may include funding for SB 343.

Marc Pittman volunteered to assist the FBC with the position classification effort.

Committee reports were then provided:

Education and Outreach: Chair Jan Metzmaker discussed E&O priorities for 2009:

- state of basin report – not likely in 2009 due to fiscal and personnel constraints
- speakers bureau -- not high enough priority for 2009
- website and portal most important – currently held up by job classification  
get on the state of lake conference proceedings
- educating developers and realtors
- SB 343 – top priority
- TMDL education effort to be undertaken with input from George Mathieus
- water quality district forum -- put on backburner for the moment
- GNP Centennial 2010 – uncertain about FBC role, but could participate in the weblink to establish opportunities for firms to get certified as green business partners and the upcoming climate change conference to discuss both local and state efforts to address global warming

Patty Mason noted that the Flathead Conservation Districts and the Lakers undertaken realtor education workshops and a water course program is held every 2 years for property owners. So the FBC may want to link into these efforts.

Patty Mason and Robin Steinkraus both observed that virtually every participant in the realtor/developer workshop supported vegetative buffers but opposed setbacks. This point should assist us in directing future education efforts.

Ron Steg then provided the Monitoring Committee report. Steg stated that no monitoring

committee meeting had been help since the last FBC meeting, but that he will try to organize a Committee meeting in late March. Ron explained that he is filling in for Julie Dalsoglio, so his role as Committee Chair is uncertain at this point.

Clayton Matt then provided a Transboundary Committee update. Clayton noted that he had spoken with Caryn Miske recently about a revised outline for the Transboundary Committee Action Plan. Clayton had not yet had a chance to fully review the proposed plan, but would touch base with Caryn shortly regarding how to proceed.

Art Compton reported on the PPOA Committee. The Committee met via conference call on February 6<sup>th</sup>, and prioritized 38 aligned entities into 12 top priorities. Art reviewed the identified priorities, along with a couple of groups which were not yet assigned to a particular contact person, including the Haskill Creek Watershed Group. Patty Mason volunteered to report back to the FBC on this group.

T Smith grouped the outreach entities into three broad categories:

- public education groups
- land conservation groups
- funding and resource management

Art also explained that he had committed non-competitive 319 funds to the FBC for the TMDL outreach effort, and that Caryn and George would work together to develop a scope of work.

He also noted that the economic stimulus funds received by DEQ will, for the most part, be allocated for infrastructure and energy conservation. Art said that restoration work – superfund remediation -- may also be eligible.

Unfortunately, no funding was allocated for watershed restoration/non-point source efforts, which was disappointing. However, the 604B element of the Clean Water Act contains broad terminology allowing for water quality "planning." In the past these funds were used for monitoring, and \$198,000 will be allocated for this purpose.

He stated that DEQ is still looking into how the funding will work, and how much will be pass thru money. Funds should arrive in next 30 days.

In terms of the State budget, Art noted that no new programs were funded given the Governor's mandate.

Retirement gift for Art Compton (framed GNP photo) was then presented. Art responded to the presentation by stating that the FBC is not only the highest profile but also the most productive, most professional watershed group in state.

This concluded the Committee reports.

Discussion: land use planning -- how should FBC be involved in planning issues?

Jim Simpson started the discussion by stating that the FBC should advocate for planning by providing expert testimony, recognizing that the actual responsibility for planning is undertaken at the local level.

Tom Smith agreed with Jim, adding that the FBC should also undertake public education on issues.

Ed Heger then cautioned that the FBC needs to be careful about what we endorse, otherwise we will get too bogged down in details, rather than working on broader issues.

Dan Bangeman then cautioned that the FBC should be careful of the stances we take, as we might arouse opposition.

Kathy Eichenberger added that planning efforts in the Flathead are followed with interest in BC, and that she is asked what Montana is doing to address uncontrolled growth, as we simultaneously asks BC to take strong action to protect the BC Flathead.

Tom Smith responded by saying that we have a responsibility to take a stand in favor of certain land use planning regulations when the science is supports such a position. This is essential to protecting water quality.

Don Loranger raised the Woods Bay issue.

Ed Heger said that the FBC should not weigh in on details if we do not have clear science, but should give general support.

Ron Steg noted that many there are many aspects to planning, but only some relate to water quality, and that the FBC should limit their role in planning accordingly.

Marc Pittman explained that he serves on Flathead County Planning Board, and that they appreciate science based comments. CFBF gives useful comments even if they are disparaged. Pittman noted that the subdivision regulations will be discussed at a retreat that evening. The Planning Board feels that more planning, including zoning, may be needed.

Joe Brenneman concurred that the County likes getting informational testimony rather than emotion appeals.

Don Loranger pointed out that the applicant often hires its own consultants, provides its own science and has an advantage at hearings. The FBC can provide a counterbalance.

George Mathieus reiterated the importance of Kathy's point. George said that Dave DeGrandpre (former FBC Executive Director) on several occasions contacted DEQ to request scientific comments on planning issues. George stated that the FBC can use DEQ and EPA as a resource.

Ron Steg added that EPA often keeps comments generic because otherwise they would be overwhelmed responding to each specific project.

Dan Bangeman explained that the Conservation District has a responsibility under the Clean Water Act to protect streams and riparian areas.

Joe Brenneman stated that the FBC has an important role to play since the protection of water quality is mandated in the Subdivision and Platting Act. Joe said that the County had only lost 2 cases challenging subdivision approvals, and that in both cases the Court ruled the County had not adequately considered water quality impacts.

Caryn Miske expressed concern about the FBC getting overwhelmed if we start responding at the micro level.

Tom Smith agreed, stating that the FBC should be involved on the macro level.

George Mathieus noted that the FBC may want to develop some generic comments as many developments often have the same or similar issues.

Marc Pittman clarified that the FBC should focus on policy, and let DEQ address specific proposals.

Tom Smith pointed out that the FBC focuses on policy, but the FBC has also addressed micro issues (specific issues or development proposals) based on FBC votes.

Ed Heger said involvement in such micro issues should only be undertaken in exceptional

cases.

Don Loranger stated, “We have a war in which one side has a philosophy of taking no prisoners and the other side has a philosophy of taking no casualties. Guess who will win?”

Chas Cartwright noted that GNP cannot get involved at the micro level even with staff of ten.

The discussion concluded with general agreement that the FBC will stick to broad policy issues, with site specific project involvement being the exception.

Chas Cartwright then provided a GNP Centennial report.

Chas noted that commemorative events rarely leave lasting effect, and the Park would like to create a legacy from the Centennial, rather than just a one-time special event. He is recommending the formal designation of Wilderness within park. Since these areas are already being managed as such, critics have said why bother? The response from GNP is why not? It will simply provide an additional layer of protection. He also dismissed the argument that such a designation would "lock things up" since about 90% of the park is already being managed as a Wilderness and all existing uses will continue with a formal designation.

Tom Smith asked if this designation could be with MWA proposal west of park and USFS retiring oil & gas leases?

Chas replied that he thought the designation would stand a better chance of passing if the bill is simple and limited. Therefore, he prefers that other issues are not tied to the designation.

#### Legislative Update

SB 305: establish an evidentiary standard for subdivision rejection and would provide an automatic permit within a certain timeframe.

SB 411: sand and gravel property rights bill which would expedite and provide for automatic approvals permitting.

Senator Brueggeman's' bill: developer can obtain DEQ review of subdivision proposal to certify it meets water quality criteria, etc. at which point automatic approval is granted. This bill passed in the Senate.

SB 482: no park dedications required in subdivisions.

SB 200: sponsored by Senator Erickson and would have provided for a Clark Fork phosphate ban on cleaning products. Bill tabled.

SJ Resolution 7: Opposes clean water restoration act HR 2421 (reestablishes that waters of US are not limited to navigable waterways).

Big Sky Rivers Act - HB 455: sponsored by Representative Reinhart. Would create mandatory setbacks on ten major waterways.

SB 423: sponsored by Senator Jackson. Would create 20 ft setbacks statewide.

HB 505: sponsored by Representative Reinhart. Would establish local government authority to create setbacks. No vote taken on this bill yet.

SB 95: sponsored by Senator Brueggeman. Would permit DEQ to establish temporary nutrient criteria. In the first reading passed 50-0.

#### DNRC Forestry and Trust Lands

Steve Frye explained that there are a number of bills addressing fire control. The bills most likely to pass are those for items such as "emergency declarations."

SB 65: introduced and failed in the last three sessions. Would streamline funding of trust lands division. This bill probably has a 50-50 chance. Steve noted that Trust lands is also working issues related to stimulus funding.

Dennis Philmon then discussed Hungry Horse stating the following:

- the North Fork and Middle Fork are putting out very little
- Columbia River Treaty complicates management of the Flathead Basin
- 94 MW output (capacity 454 MW)
- full pool June 30 (+/- 4 days)

- will only draft 10 feet days by late Sept
- previous years: 20 feet by the end of August
- will only have 3000 cfs this yr
- discharge in South Fork in July-Aug last year equaled 6000

Dan B then provided an update on bills and regulations related to the Flathead Conservation District. Dan stated that 310 permits are up, and the District is updating its rules related to docks and boat ramps. This process will take about 2 months, and will include a review from Helena and inclusion of public comments.

Dan reviewed the Stream Protection Act sponsored by Verdell Jackson which would have created a 20 foot stream management zone. The CD members opposed this bill.

Caryn Miske asked if a vote was needed if the FBC was to support SB 455. She also inquired as to the protocol for quick response on bills in the legislature.

Ed Heger noted that 455 was not as good as what we had originally advocated for in Flathead County.

Art Compton said that DEQ requested the Governor's permission to testify in support of this bill.

Motion by Don Loranger, seconded by Jim Simpson, to authorize Caryn to act as she feels appropriate on SB 455. Motion passed unanimously.

Members then discussed the interim policy for quick response on legislation. Members agreed unanimously that if issues arose prior to regularly scheduled FBC meetings, then Caryn would consult with and obtain approval from the Executive Committee in order to testify on in support of bills.

August meeting scheduled for August 5<sup>th</sup> in GNP.

Meeting adjourned.