

Flathead Basin Commission Meeting
February 24, 2010
Tribal Council Chambers, Polson

In attendance: Cathy Barbouletos, Don Loranger, Chas Cartwright, Bob Sandman, Jim Simpson, Tom Smith, Rich Jansen, Dan Bangeman, Ed Heger, George Mathieus, Julie Dalsoglio, Ron Steg, Joe Lamson, Mark Reller, John Wachsmuth, Jeff Harris, Erin Sexton, Robin Steinkraus, Tiffany Lyden

Ed Heger calls the meeting to order. Ed reminded members to submit their travel expense reimbursement forms and in-kind contributions accounting sheet to C. Miske.

Roll call established that a quorum (8 voting members) is present.

Richard Jansen attended the meeting as Acting Natural Resource Director for CSKT.

Cathy Barbouletos motions to pass and Dan Bangeman seconds motion to approve minutes from last meeting. Motion carries unanimously.

Vice Chair Nomination and Voting Procedures

E. Heger, representing the Nominating Committee, nominates Chas Cartwright for Vice Chair.

C. Barbouletos nominates Jim Simpson and Bob Sandman seconds.

Julie Dalsoglio clarifies that ex-officio members do not vote.

Don Loranger raises the issue of voting procedures, and based on a new interpretation of the enabling legislation, it is agreed, via consensus, that the FBC will need 8 of 15 voting members in order for motions to carry.

D. Loranger than asks J. Simpson and C. Cartwright for a statement of interest in relation to the Vice-Chair position.

C. Cartwright explained that until recently, his participation on the FBC was restricted strictly to a liaison function. At the end of the year, with the help of the Congressional delegation and C. Miske, he finally received clearance from NPS/DOI to serve as a voting member, which includes the ability for run for the Vice-Chair position. Chas explained that 2010 will be a busy year for the Park, due to the centennial, but that this would not preclude his participation on the FBC. He also explained that although he had missed several FBC meetings, he attended all of the recent Executive Committee meetings (as an observer). He noted that after 2010, he could fully dedicate himself to the position of Vice-Chair. Chas concluded by stating that he was fully committed and

interested. He also expressed an interest in working with the group and striving for consensus.

Jim Simpson explained that he will need to get back to members at the April meeting to confirm whether his other commitments will permit him to serve as Vice-Chair.

E. Heger explains that in order for a vote for Vice-Chair to carry, 8 votes would be required. He suggested that a vote be postponed until April in order to give J. Simpson and opportunity to determine whether or not he would be able to serve. E. Heger then said that he would like to see both Chas and Jim on the Executive Committee.

D. Loranger points out that given the bylaws the Vice-Chair becomes the Chair after two years, so in effect this is a vote for the next Chair.

George Mathieus comments that it seems a bit odd that a government employee would be Vice-Chair, since the FBC is a citizens' commission.

Thompson Smith explains that over the years, both citizens and government employees have served as Chairs. He also points out that the FBC has mixed membership, and that citizens are in fact the minority. Tom states that the FBC has been without a Vice-Chair for some time and that the position needs to be filled.

Julie Dalsoglio notes that the FBC is a unique Commission, and that getting good leadership and the right issues on the table is more important than affiliation.

Motion to postpone the vote for fuller turnout and so J. Simpson can fully consider his nomination. Bob Sandman makes the motion to postpone, and have both Chas and Jim on the Executive Committee until the vote for Vice-Chair. Dan Bangeman seconds, but the motion fails 7 to 1.

C. Cartwright then states that while he is glad to serve, he does not need to be Vice-Chair or to serve on the Executive Committee, and that regardless he is pleased to be back on the FBC as a voting member. He also noted that leaders should be about finding consensus, not about choosing the issues.

Voting is then conducted, and the ex officio members count the votes. The 8 ballots are split 5 to 3, and the vote will have to be postponed. E. Heger invites both Chas and Jim to attend future Executive Committee meetings as observers.

The composition/role of the Executive Committee to be discussed at the April meeting.

Report from the Chair

E. Heger then reviews the activities of the Executive Committee, focusing on the Committee's efforts to complete the ED performance appraisal documents.

D. Loranger expresses concerns about the role of the Executive Committee, and points out that decisions should be made by the full FBC membership.

E. Heger points out that the Executive Committee works up recommendations with the Executive Director, and then such recommendations are brought to the full FBC.

A discussion ensues about voting via email in order to get broader FBC input.

J. Simpson expresses concern about email voting, as it does not allow for full discussion.

T. Smith suggests that the group could allow email votes to carry if they are unanimous and if not the vote would be taken at the next FBC meeting. B. Sandman notes that the bylaws require all votes to be reflected in the minutes.

C. Miske notes that email votes violate laws governing public meetings.

E. Heger states that a lot has to do with the nature of the issue or decision. Operational decisions can be made by the Executive Committee, while policy decisions are made by the full FBC in a public setting. The Executive Director implements the policy decisions voted upon by the members.

C. Miske suggested that members could receive notice of Executive Committee meetings, and that minutes of such meetings could be forwarded to members. She also noted that all members are welcome to attend Executive Committee meetings if they wish.

C. Cartwright recalled that last year the Executive Committee had taken on a life of its own. Thus, the Executive Committee should focus on administrative issues.

E. Heger reminded the members that last year, during the legislative session, quick turn around time was sometimes needed, but members needed to be kept informed.

E. Heger then continues with his report. The new reality of tightening budgets will require us to demonstrate the need to continue funding for the FBC. He also references the FBC office move, webpage, importance of the vmp program, and timeline for the biennial report.

E. Heger also discussed the ED performance appraisal structure, which will rely on state reporting forms. Joe Lamson [representing DNRC] would undertake the administrative review, and the Chair and Vice-Chair would undertake the substantive review. The three reviewers would also seek input from all FBC members. Both Joe and Ed would sign off on the appraisal. He explained that evaluation criteria will be in place and announced by June, and the appraisal period will run from July 1, 2010 to June 30, 2011, to correspond with the budget years. Discussions during the course of the year regarding progress on the evaluation criteria would also be undertaken.

E. Heger reminded the members that they had received a draft work plan, and he welcomed member review and comments.

FBC-DNRC MOU Update

D. Loranger thanked Joe Lamson for his help during the MOU discussions. Don explained that the MOU discussions started, in part, due to DNRC's concerns about the FBC compliance with budget and contract reporting requirements. He also noted that lots of personality conflict was involved, most of which has resolved itself since many of the folks at the center of the controversy are no longer involved. The FBC and DNCR are now building positive relationships, and DNRC is happy in terms of compliance with administrative requirements.

That said, Don explained that the FBC and DNCR were unable to reach a final MOU that satisfied all parties. However, he noted that this is not all bad as arguments can be made that MOUs are for folks that do not trust each other.

Don noted that the primary sticking point was whether the FBC can hire its own employees. He stated that the law appeared clear, and that the FBC CEO should not have to wear an agency [DNRC] label. However, he pointed out that although the parties did not come to agreement on this central issue, both parties agree to forego the MOU. Don also pointed out that an AG opinion was still a possibility, but that such an opinion is not needed at this time. Don recommended that the MOU Committee be mothballed until it is needed again.

D. Loranger did object to having DNRC sign off on the employee review. He said that the FBC should welcome DNRC input, but at the end of the day the FBC should make the final call on performance.

Joe Lamson explained the DNRC position regarding FBC employees. Joe stated that DNRC does not dispute FBC's ability to hire, but DNRC does have certain obligations because DNRC cuts the FBC paychecks every two weeks.

Don Loranger replies by saying that the FBC and DNRC are so close to agreement on the issues, and if we have to proceed in finalizing an MOU an AG opinion would be helpful.

Jim Simpson points out that the FBC could lose its money from the legislature. He then asks if DNRC would carry the FBC employee if FBC funding is cut.

Joe Lamson states that the FBC ED would not be absorbed into the DNRC budget in such a scenario. Joe then points out that it is important for the FBC to make a good case for continued funding because the perception might be that with the BC-MT MOU in place, the FBC is no longer needed.

E. Heger then asks if the Commission raised funds, would the ED still be a state employee. This question is not fully resolved.

T. Smith then points out that once again we are discussing the meaning of administrative attachment.

C. Cartwright says that it is good that the substance of the relationship between the FBC and DNRC has improved, but he is disappointed that the MOU did not come to fruition.

D Loranger responds that the MOU Committee spent many hours on this effort. He notes that it was unfortunate that we thought an MOU was needed, but once this determination was made he had hoped to bring the MOU to fruition. At one point, the group had an MOU with fuzzy language that did not solve the problems, it just delayed dealing with the them. Currently, the acrimonious relationship has improved, but Don noted that he did obtain an informal AG opinion in the event that the MOU is revisited. For now, Don suggested that we just need to move forward.

T. Smith poses a question: the drive [for an MOU] came out of the rancorous relationship between the organizations, and now that the relationship has improved, this may be the best time to resolve outstanding issues.

D. Loranger responds by saying that this is not possible given the remaining fundamental differences of opinion.

E. Heger then thanks Joe and Don for their efforts. Ed says that the intent between the parties in terms of a continued working relationship is in place, and that continuing to press now for the MOU could dissolve the improvements made to date. Therefore, the MOU will be in hibernation, and hopefully we learn more in the meantime to better inform future MOU discussions.

D. Loranger moved and C. Cartwright seconded the MOU Committee report to table the MOU discussion.

Bob Sandman then asks for DNRC's view on FBC's administrative compliance.

Joe Lamson states that he is getting nothing but good news, and administrative deadlines are being met. He also relays that Mary Sexton believes that we are moving in the spirit of the MOU.

The motion passes on a unanimous voice vote.

BREAK

Executive Director Report

BUDGET

Caryn Miske stated that she is currently working through the budget process [EPP] and fund increases for any program will be difficult to come by. She noted that the FBC will be doing well if it maintains its current funding levels. Therefore, the FBC will request its base budget for the past 2 years which will include administrative costs, ED FTE, etc.

Joe Lamson added that the latest 5% cut was for programs funded by general funds, and the FBC is funded by Resource Indemnity Trust (RIT) funds. Currently, the income from this trust has declined significantly, so the FBC may be facing additional cuts in the future if interest income does not improve.

Ed Heger adds that we may need to seek out private dollars to offset the risk of cuts. C. Miske then provides a status report on the status of the modified FTE position, noting that DNRC will not create such a position at this time. However, Caryn noted that other FTEs from other agencies are still an open possibility.

George Mathieus asked if we were looking at a full or a half FTE, and whether the FBC needed the FTE position, the money for the FTE or both?

Caryn replied that the FTE position is critical, but the funding for such a position would certainly help. She added that an additional FTE would also allow the FBC to seek additional grant funding.

Miske then discussed her meeting with the Community Foundation, explaining that a relationship with such a foundation would allow the FBC to access foundations that gave strictly to 501(c)(3) organizations, and would allow donors to deduct such donations on their tax returns. Miske noted that the meeting with the Community Foundation went well and 4 of the 5 members appeared ready to enter into an agreement with the FBC. The fifth member expressed some philosophical concerns regarding the FBC's status as a government agency. Miske noted that the Foundation overhead was only 3%, and for that alone the fiscal agent service agreement to formalize a pass through was worth pursuing. Lastly, Miske noted that if the Community Foundation agreed to sponsor the FBC, she would bring such a recommendation back to the full FBC for further discussion.

Julie Dalsoglio inquired if vacant FTEs can be filled if money from another funding source is obtained – in other words would outside funds free an agency from the vacancy savings issue?

This question was not definitely answered.

E. Heger then inquired if private funds could be used to cover the ED FTE?

This question was not definitely answered.

Mark Reller inquired as to whether or not the FBC web page could have a donation button so people could give money to the FBC (or volunteer time)?

C. Miske responded that the FBC website can accommodate this, and also noted that personnel can be hired as consultants for a particular task, but they could not be hired as general staff without an FTE in place.

Further, Caryn said for grant writing, seasonal VMP work, etc. a 90-day hire for a consultant was quite easy, but beyond that more administrative red tape was attached, and competitive bidding would be required.

Caryn also addressed a question raised at the last meeting as to whether or not donations to state agencies are tax deductible. Based on her research, individual can make a tax deductible donation of \$100 to a state agency, and joint return can make a \$200 donation. [Donations may be differentiated from tax deductible expenses]

Caryn then continued the ED report, noting that the **groundwater study** was moving forward, and the results from the first set of samples came back positive for VOCs, and although caffeine and a couple of other PPCPs were found, the results for the pharmaceuticals would need to be refined given the EPA detection limits. Currently, other labs were being investigated. She also explained that the Phase II groundwater study could be eliminated if the stimulus money that was to be used to fund the study disappears due to the budget crisis. Under Phase I, two more sampling seasons remain in the current budget.

Caryn also explained that the Whitefish septic leachate study will not overlap with the FBC study since the Whitefish study is only looking at surface waters.

Caryn noted that the **VMP** program will need to be streamlined in order to save money and capture economies of scale. Currently, the FBC does not have resources to fund a multiple per year sampling regime, as requested by DEQ. Therefore, the funds for the lab analysis to be provided by DEQ may need to be returned as the funds do not come close to covering the additional sampling seasons requested. The goal of the VMP program will be to continue what we have done in past.

The **SEEP** (stormwater education program for contractors) training is moving forward, and the first training session will occur this spring in Kalispell. The SEEP program was developed in Idaho, and trainers from Idaho will be used for this first training session. The goal is to have an ongoing training certification program that is self supporting. The FBC has agreed to assist with the development of the riparian buffer SEEP training module.

Miske said that the FBC was spearheading an effort to determine the feasibility of a **Water Quality District** to cover the entirety of the basin. She noted that a workgroup meeting will be held in March to flesh out this issue further.

Caryn also discussed ongoing joint programs, including the publication of the Lake Book, ongoing efforts on the Sourcebook (which Caryn will help edit), the CMP Annual Forum in Fernie on April 13-14, and the Clarkfork Task Force (Caryn will be doing an AIS presentation at the Clarkfork Task Force Roundtable in early March).

In January, Caryn said that she hired Wes Hunt, a website designer, to revamp the **FBC website** (hand out on front page design). Caryn noted that maintenance on this site will be user friendly, allowing staff to drag and drop text and photos, so that the site can be easily updated in the future. However, large scale structural changes would still require the assistance of a web designer.

Caryn discussed the need for a **legislative strategy** prior to the kick off of the legislative session in the fall of 2010. She recommended reaching out to those with whom the FBC has an existing relationship, and then to start fostering new relationships.

Caryn then made some general announcements:

- A new group, the Flathead waste management group, would be convening on March 9th. Jim Simpson and Don Loranger would be representing the FBC on this group.
- A new storm water management group was also formed, and we may need a participant from the FBC. Caryn would arrange for a presentation from this group at the next meeting.
- Dan Bangeman was reappointed to the FBC.
- The FBC office would be moved to the new DNRC office on April 30th.
- Cathy Barbouletos would be retiring from the USFS on April 1, 2010.
- Caryn asked if the members would like to have a June or August retreat? This issue will be taken up at the April meeting.
- Lastly, Caryn expressed sadness that Virginia Sloan's husband had passed away that week, and that services would be held Friday in Kalispell.

LUNCH – presentation of award to Cathy Barbouletos for service to the FBC.

Presentation: Erik Hanson, ANS Coordinator, Department of Agriculture

Erik summarized recent Dept. of Agriculture efforts regarding AIS. Highlights included:

- local efforts needed to prevent mussel infestation, including volunteers for check stations
- From 1993-99, Zebra and quagga have cost the U.S. \$5 billion
- ANS management area status pending for Noxon reservoir, to allow for mandatory boat inspections. Dept. of Ag estimates that such check stations will cost \$40k per check station per year.
- Low calcium levels in water bodies are a limiting factor, but calcium levels do not prevent infestations. For example, Lake Tahoe had low calcium levels but tests showed that the mussels could grow in the Lake despite this limitation.

- Recommended targeting high risk vectors, such as major highways to/from infected areas.
- If there is sufficient interest, Dept of Ag will sponsor an aquatic weed plant identification event during the summer.

Don Loranger asked if we could get this type of information (plant ID, AIS curriculum, setback education) into the local school systems.

Caryn Miske responded the FWP was planning on doing curriculum development.

Questions were then raised about the state-of-the-art quick response. Erik explained Chlorine and drying would kill the mussels, and that an inactive bacteria found in soils was currently being researched as a mitigation/eradication tool.

Mark Reller pointed out the wash stations with sponsors splashed across the wash unit might be possible.

Don Loranger asked if the FBC could go to the Office of Public Education, the teachers union or the Science Teachers Association and get them involved? C. Miske responded that this was a good idea.

Caryn then reminded folks that an AIS boat inspection training would be held from 10-3 on April 7th at FWP in Kalispell (on Meridian). RSVP to Eileen Rice at FWP.

Mark Reller inquired about the issuance of permits, such as derby permits under FWP or park research permits at GNP -- was AIS compliance included in these permits? Can there be an inventory of all combined permits issued by FWP and Dept of AG to see if there can be similar AIS compliance required. How about fishing license text that says when you by a permit, you are willing to have your boat inspected?

Presentation: Larry van Rinsum, Flathead Conservation District

Larry provided an overview of the Flathead CD, including the history, function and political structure of the organization, as well as summary of existing programs.

Presentation: Gerald Mueller, Clark Fork Task Force

Gerald provided an overview of the history and function of the Task Force, and focused on a couple of recent issues, including but not limited to:

- Senate bill 303 requires an inventory of consumptive and non consumptive uses in each basin.
- Water reservation process – available in the Missouri and Yellowstone, but not the Clark Fork Basin.
- Large water rights in lower end of the basin constrain water availability in the future, and put junior users at risk.

TMDL Update

Ron Steg reported that 2 of 10 technical reports were complete (storm water and forest roads). These reports have undergone agency partner level review. See the DEQ website. The forest fire and harvest and point source reports are now ready for agency review, and the septic, ground water, and lakes and water quality data summary are currently in internal review.

Transboundary Update

Caryn Miske reported that the BC-MT MOU that was recently signed was an incredible step forward, and much deserved credit goes to B.C. She noted that the MOU is the first step as it provides a broad vision for the future. Details regarding implementation will be worked out over time.

Caryn also emphasized that on our side of the border we need to work towards retiring oil and gas leases, and progress is underway on that front.

Mark Reller inquired about the meaning of the “commit to work on” clauses in the MOU, and that it might be good to align our charter with that task list and identify where we are well positioned to meet the needs noted in the MOU.

Ed Heger said it was also important to demonstrate why the FBC exist besides transboundary work, such as monitoring and all the other tasks we provide.

Don Loranger suggested that public education and op-ed pieces were needed to educate the voters and the legislature as to what needs done.

Cathy Barbouletos said that a long time ago, the FBC produced a small hard copy version of the strategic plan and our operational tasks. Then everybody got an assignment and we went out and did one-on-ones with legislators. We created a list of the issues and questions, and developed the biennial report and legislative strategy from that effort.

Joe Lamson suggested that we sit down with Hal [Harper] and Mike [Volesky] and discuss the next steps for the transboundary work and how the FBC fits in.

Caryn Miske responded that she already had a call scheduled with Hal and the Congressional staffers, and that the transboundary effort was an interactive effort with input from all of the folks involved in the transboundary work.

Julie Dalsoglio built on Cathy Barbouletos’ suggestion, noting that the FBC needs a list of what we got done, contrasted with what we now need to do.

EPA Update

Julie Dalsoglio is now the permanent office director in the Helena office.

Ron Steg is now the deputy director, and Ron will serve as the lead contact for the FBC, although Julie will continue to remain involved.

Flathead County Update

Jeff Harris reported that Flathead County settled an expensive lawsuit on the North Shore -- \$1 million over three years to the developer, plus some road improvements. The developer would be entitled to move forward with a modified development plan. The settlement would be going out for public comment shortly.

Jeff also stated that the Lakeside Neighborhood Plan went to the Community Council and was adopted and sent to the County. He believed that this plan would provide much better land use guidance in the lakeside area.

Future Meeting Dates

April 21, 2010 meeting to be held in the USFS conference room in Kalispell from 10-4.

June 16, 2010 meeting to be held in the southern part of the Basin, location TBD.

Meeting adjourned.