

**Flathead Basin Commission Meeting**  
**June 16, 2010**  
**Tribal Council Chambers, Pablo, Montana**  
**10:00 am – 4:00 pm**

FBC members/Staff in attendance: Mark Reller, Bob Sandman, Jim Simpson, Susan Brueggeman, Mickey Sogard, Chip Weber, Ron Steg, George Mathieus, Ed Heger, Caryn Miske, Rich Jansen, Jan Metzmaker, Dan Bangeman, Don Loranger, Clint Whitney

Others in attendance: BJ Grieve, Flathead County, Tom Cox, Flathead County and Jason Gildea, EPA.

Roll taken and quorum present.

Reminder: Forward C. Miske the in-kind accounting.

Motion to approve minutes from the last meeting made by Jan Metzmaker. Seconded by Dan Bangeman. Minutes approved by consensus.

Ed Heger discussed FBC governance, and in particular the Executive committee membership. Based on the by-laws the member at large needs to be citizen member, or there needs to be a least one citizen member on the Executive Committee. Ed also discussed the oversight functions of the Committee.

The members then discussed the FBC retreat agenda scheduled for September 1, 2010. Agenda items identified included:

- need to flesh out member concerns and leadership
- legislative agenda for 2011 session
- legislative strategy pre and post election

The discussion then returned to the proposed amendment to the by-laws. Ed explains that he wants to amend the by-laws to read that the Executive Committee “supervises” rather than “monitors” the Executive Director. In addition, Ed proposed to amend the member at large language vs. non-affiliated citizen member.

Don Loranger points out the need to modify point 9 related to MOU oversight.

Clint Whitney moved to accept the “at large” change which was seconded by Jan Metzmaker. The motion carries by a unanimous voice vote.

Jan Metzmaker then moves to accept the change to “supervise.” Which is seconded by Mickey Sogard.

Clint Whitney expressed concerns regarding the micro-management of the Executive Director. Some concerns expressed in the past relates to the Executive Committee

stretching its authority, and not fully disclosing issues to the entire body. The Executive Director is doing a great job -- the monthly report is great. "Supervise" implies more direct management that is the purview of the entire commission.

Also, what about issues between meetings that require immediate attention?

Jan Metzmaker asked who the Executive Director reports to?

Caryn Miske replied Ed, Heger, Joe Lamson, the Executive Committee and the Commission.

Don Loranger explains that when he reads "supervise" he thinks we are more into assessing performance and identifying priorities.

Clint Whitney responds that the full commission still needs to be the primary entity overseeing the Executive Director.

Dan Bangeman says the Lake County CD committee does staff appraisals, and the appraisal are then brought to the board for approval.

Clint Whitney said that would work.

Chip Weber expressed concern in limiting this solely to the performance appraisal. There are supervisory needs, some of which may be urgent. There are also lots of day to day things that do not rise to the full commission level, but some input from the Executive Committee or Chair may be needed. And some things are trust based, giving discretion to the Executive Director.

Mickey Sogard responded that she feels the same way as Chip, and it is a matter of how you interpret "supervise."

Ed Heger noted that there are privacy issues in terms of what you can or should share with the full open commission. There will also be a performance review because the Executive Director is paid by the State. Ed explains that the FBC will use a State form modified for the FBC. The FBC Chair and Vice Chair will sign off on the appraisal.

Clint Whitney agrees that this is a reasonable approach as long as there is full disclosure to the Commission. Clint then calls for the question. The motion is to accept the language change from "monitor" to "supervise." The motion carries with one vote in opposition (B. Sandman).

### **Election of Vice Chair:**

Ed Heger reminds the members that this vote was initially held several meetings ago.

Jim Simpson withdraws his name from the list of candidates for vice chairs. Jim expressed concerns about his duration on the commission, and did not want to potentially put a break in the line of leadership.

Ed Heger notes that Chas Cartwright is still on the list. Don Loranger moved to accept Chas Cartwright via acclamation. Jim Simpson and Mickey Sogard both second. A vote is taken and Bob Sandman opposes, noting that Chas is not present for the vote. The motion passes and Chas is voted in as Vice Chair.

Ed Heger then requests nominations for the member at large position. Jan Metzmaker nominates Tom Smith. Clint Whitney nominates Chip Weber. Mickey seconds.

Chip Weber expresses some reservations given that he is new to the FBC and is concerned that he may not be able to adequately fulfill this role.

It is clarified that the member-at-large serves for the same duration as the term of the current Chair. Ed Heger's terms as Chair ends December 2011.

Dan Bangeman nominates Thompson Smith, and Jan Metzmaker seconds.

Clint Whitney moves to close the nominations, and Jan Metzmaker seconds.

Paper ballots distributed. The vote does not have a quorum (neither candidate received 8 votes). A second vote will be taken at a future meeting.

### **Proposed letter for Ronan storm water project:**

Jan Metzmaker moves for passage of the proposed letter, and the motion is seconded by Mickey Sogard, with the stipulation that grammatical and other edits are made (note that Ronan does not contribute to Flathead Lake), including updating of the letterhead. The motion passes unanimously.

### **Staff Appraisal Process:**

Ed Heger reported that the current suggestion for staff appraisals is to use State forms, modified to meet FBC needs, and cosigned by the FBC Chair and Vice Chair (for both substantive review and administrative review) and DNRC (for administrative review only).

Clint Whitney pointed out that the Executive Director works for the FBC and that another approach was preferable. He suggested a collaborative process, with the Chair and the Executive Committee to collaborate with DNRC, through Joe Lamson to DNRC Executives. He recommended that the appraisal be signed by the FBC, not DNRC as the Executive Director is an FBC employee.

Caryn Miske explained that she had spoken with Joe Lamson, and that he agreed that DNRC would not provide the substantive review. She explained that Joe agreed that DNRC would only have authority for administrative review.

Mickey Sogard said that we learned a great deal in the MOU debates, and previous issues with administrative compliance were now corrected, so this should no longer be an issue in terms of the appraisal.

Don Loranger expressed a slightly different point of view, noting that this issue is not just about the independence of the FBC. While the FBC wants DNRC input on compliance with State procedures, we do not want a DNRC brand on FBC employees. The FBC has the right to hire our employee -- that is clear in the enabling legislation. Once we adopt a process which allows another agency to sign off on our appraisals, FBC staff is virtually branded as DNRC staff.

Don advocated that the FBC do the review, and request a letter from DNRC on their seeking their input.

Jim Simpson asked if the Executive Director was a state employee or an FBC employee. The issue is one of Executive Director and member liability. He explained that other boards have insurance for liability associated with their personnel. For example, the Lake County CD has chosen to add liability insurance due to uncertainty in the courts. Once we say the Executive Director is an employee of the FBC, we have clouded the liability trail. Liability insurance should be considered.

Don Loranger replied that he already raised this issue with Mary Sexton, and confirmed that the Executive Director is a State employee.

Jim Simpson expressed concern that this still does not prevent a suit against the board members.

Clint in the law we are a state agency just like DNRC. But by law we are attached to the DNRC.

Mickey Sogard responded to Jim's question regarding liability. Mickey explained that she was on a board when it had been sued. The insurance does not automatically kick in, the insurance company waits for the settlement or opinion.

Ed Heger commented in relation to the appraisal process, noting that in the history of the FBC, the State has not interfered on policy issues.

Jan Metzmaker commented that these issues between the FBC and DNRC have been going on for too long, and compromise was needed.

Don Loranger made a motion that only the FBC signs off on staff appraisals, and input from DNRC is solicited in a separate letter. .

Clint Whitney seconded the motion.

Caryn Miske responds to the motion by stating the Joe Lamson was not comfortable with this option.

Dan Bangeman asked if DNRC does an audit of the FBC. Caryn Miske responded that all funds are run through DNRC so if DNRC is audited, then the FBC is audited.

Chip Weber stated that he saw the need for independence, but if there was an employee I had to supervise, I would want mechanisms to be able to reward and work with my employee. We do have to also meet the needs of the state.

George Mathieus asked what the consequence of the “brand” was, especially if the FBC loses its funding as a result of the continued conflict with DNRC.

Clint Whitney responded with another question: what is the consequence if DNRC does not sign the form? In my view, DNRC signing the form is the camel’s nose under the tent. It is potentially a way for DNRC to gain more control.

Jan Metzmaker said if the Executive Director is comfortable I am comfortable.

Caryn Miske said that this may have unforeseen consequences to future generations involved with the FBC, but that it appeared to be a valid compromise.

Mickey Sogard pointed out that Joe Lamson said he only needed to sign the administrative portions of the appraisal.

Don Loranger withdraws his motion and then reintroduces the appraisal motion as follows:

The chair, with the concurrence of the FBC Executive Committee, shall complete an annual Montana personnel system performance appraisal for the FBC Executive Director. The Deputy Director, DNRC, will be afforded the opportunity to provide formal input to this process and the opportunity to sign the appraisal solely reflecting of the Executive Director compliance with Montana administration and contracting procedures.

The motion is seconded by Mickey Sogard, and the motion is adopted.

**Paul Williams Stewardship award:**

Caryn Miske noted that no award was given in 2009, and she recommended that Verdell Jackson and Jana Taylor receive the award for their work on SB 343 (the Aquatic Invasive Species statute). She also recommended that the Governor’s office, and in particular Hal Harper, be recognized for its work on the BC-MT MOU in 2010. A discussion ensued and Mark Reller suggested that Hal Harper be recognized

for his lifetime achievement in protecting water quality award. The members agreed via consensus to present the 2009 award to Jackson and Taylor, and the 2010 award to Harper.

### **Report from Executive Director (cont.): Caryn Miske**

*Budget update* – the FBC is not on the short list for cuts at the present time.

*AIS* - good progress is being made, and the basin has the possibility of receiving \$100,000 in BPA mitigation money via FWP. In addition, the Dept of Agriculture is giving the FBC a small amount of funding for an AIS coordinator, and a wash unit dedicated for use in the basin. The AIS conference was well received and had a large agency presence. If a similar conference is held next spring, our goal will be to have a larger showing from the public. Glacier National Park has commenced its AIS inspection/sticker program.

*Legislative outreach strategy* – it would be optimal to begin our outreach efforts in July and August, before legislators get really busy in the fall. In the past, selected members volunteered to do outreach with legislators one and one which seemed to have worked well. So I will compile a list of the legislators and folks that are running for office. The FBC members can look over the list and volunteer to do outreach with specific legislators. I can then identify gaps and we can fill in as best we can.

*Biennial report* – the goal is to have the draft report completed so that we can use it with our outreach effort to legislators. If this is not possible, I will complete the one page list of accomplishments and funding needs in its place. The goal will be to complete a draft report by the end of June. Caryn will send out the draft report (text only) electronically, and the members will have at least two weeks to review the text.

Ed Heger asked if we would focus on local legislators in the basin? Caryn Miske responded that local legislators would be a priority, but there are others that would likely come into play as well, such as House appropriations members, and legislators that might be pivotal related to specific pieces of legislation.

*Legislative session* – the FBC needs to determine what are the legislative priorities for the 2011 session. C. Miske recommended that SB 343 be revised. Currently, the AIS statutes does not cover or does not adequately cover the following: user fees with boat registration or fishing licenses; quarantine process for contaminated boats; enforcement issues; and designated state management area with mandatory check stations.

Miske suggested that other legislative priorities be identified.

Clint Whitney suggested that we build a relationship with legislators to support the effort to amend SB 343. Don Loranger pointed out that an incumbent can get draft bills in the hopper prior to session. He suggested that we invite legislators and make a presentation on AIS, and in particular the economic impacts associated with AIS.

George Mathieus pointed out that as a State agency the FBC needed to be aware of the process for implementing and getting approval for a legislative agenda. Caryn Miske explained that the FBC would not sponsor legislation, but that we would assist with outreach and work with the sponsors to assist in educating key stakeholder groups. George cautioned that the FBC be careful as it is a State agency in the Executive branch.

Dan Bangeman stated that wake action was a problem on Flathead River. Existing laws apply only to lakes, and they should also apply to Rivers in order to stem river bank erosion. Jim Simpson seconded that idea, and said that the Lake County CD would support that as well.

Erin Sexton reminded the members that the last time the Monitoring Committee met, funding for monitoring was still in need. George Mathieus suggested inviting legislators to a Monitoring Committee meeting, for education and relationship building.

Bob Sandman pointed out that this legislative session will be tough. He recalled the last session when State Agencies were cut 7%, plus a mandated vacancy savings. He said that the State is now looking at a additional 10% cut to match projected revenue. All of this will be reflected in the Governor's budget.

George Mathieus explained that the 5% mandatory reduction has been in statute, and this will be the starting point for the 2011 legislative session.

Bob Sandman suggested that the FBC maintain a low profile as we are competing with prisons, social services and schools for money. We can talk with legislators, but do so carefully since folks are going to be looking for ways to cut programs. We need to construct our message very carefully.

Ed Heger said that part of our message is how we are leveraging our money.

Bob Sandman agreed, but pointed out that it was not a good time to ask for any new money.

George Mathieus pointed out with the signing of the BC/MT MOU, that could be read by some as the end of the FBC.

Caryn Miske responded that the MOU is first step forward. While legally binding, it is not necessarily permanent. We need to keep moving that forward towards more permanency. She also pointed out that Hal Harper's retirement might also impact the transboundary effort in ways not yet known.

Ed Heger suggested that at the September retreat, the members discuss the trans-boundary effort as we need to think through and articulate our role in the future.

Caryn Miske noted that Premier Campbell will step down in a year or two, and his “executive order” could be rescinded. Therefore, it is important to strive for additional assurances related to permanency.

Susan Brueggeman reminded the members that in the 1980’s the FBC focused on the Transboundary effort. However, the statute is much broader. Susan noted that members should not forget that the FBC remains important in relation to both the transboundary effort and its other duties related to the protection of water quality.

Ed Heger suggested that members share their thoughts regarding priorities with Caryn Miske as we move forward.

*SEEP Program* - a riparian corridor training module was commenced, but it is temporarily on hold given changes in local educational needs.

*VMP* - the program is moving forward, and a coordinator has been hired. FBC and FWP (the Whitefish to Eureka program) is splitting the costs for the coordinator, and FWP is providing the truck and boat. An AIS monitoring component will be added this year. If we can get a SAP approved, and if we have sufficient funding for the coordinator, DEQ funding to offset the costs of lab analyses is still available, but we would need to commit to monitoring at the Flathead Lake sites three times this summer, which may not be possible. We will continue to work with DEQ to develop an approved SAP.

*Website* – the website redesign/framework is completed, but updating the site remains difficult due to lack of time and expertise. Caryn recommended contracting this service out, and agreed that she would still try to work on the big picture issues.

Ed Heger noted that this is an important area, and he believed it would be dollars well spent to hire a consultant.

Mickey Sogard inquired if the FBC had the necessary funding, and C. Miske replied in the affirmative.

Susan Brueggeman said that Lake County gets a package group rate for their web services, and they pay about \$50 per month for updates.

Caryn Miske said she would confer with Susan regarding this service.

*Pharmaceutical return program* – Flathead County Rx return program was a great success.

*Executive Director work plan* – plan finalized, and responsibility associated with the completion of the biennial report moved up higher in the priority list.

Caryn Miske suggested, and the members agreed that the FBC should send thank you letters to the companies that retired oil and gas leases in the Flathead.

## **Update on Water Quality District: Susan Brueggeman and Caryn Miske**

Susan Brueggeman summarized accomplishments related to the proposed WQD since the FBC's last meeting in April. She noted that the a WQD presentation had been made to the AIS work group, and the group supported the creation of such a district.

Jim Simpson asked if the AIS workgroup was a statewide group? Caryn Miske responded that Susan was referencing the Flathead basin AIS work group, which was composed of federal, state, tribal, and local agencies, as well as select stakeholder groups.

Susan Brueggeman pointed out that the WQD Study Group was still in the "is this a good idea" phase. She explained that the Study Group will visit with the Lake County Commissioners over the summer to talk more about this issue. And she also noted that she, C. Miske and P. Trusler had talked before with the Flathead County Commissioners and would like to do that again.

Caryn Miske explained that the current vision of the WQD study group is that the WQD would assist in implementing the AIS plan prepared by the Flathead AIS work group, and the QWD could contract with the Departments of Agricultural and/or FWP (as per SB 343) to supplement State AIS prevention efforts at the local level. It is envisioned that the FBC would continue doing the same functions in terms of monitoring and trans-boundary work. She recognized that currently the FBC is spending time on the AIS effort as well, but that the proposed WQD would reduce the amount of time the FBC needed to spend working on the AIS issue as the WQD coordinator would be able to take on some of the tasks now being provided by the FBC.

Jim Simpson asked if the sole focus of the proposed WQD AIS? Caryn explained that the primary mission of the WQD would be AIS, but it would also have additional capabilities related to things such as education and outreach.

Susan Brueggeman then explained that the WQD would be able to focus on funding for the AIS effort, manage the AIS plan for the basin, and would be able to accept grants for a variety of projects, including but not limited to: storm water management, septic system management, water/sewer district process support, and gaps in education and outreach.

Jim Simpson asked whether the WQD could fund monitoring efforts if the State decided to not fund the FBC. Susan Brueggeman replied that it could, and it could also fund other agencies. She also pointed out that local funding, and local buy in is important. In addition, funding associated with the WQD would be more stable funding than one-time State or federal funding.

Dan Bangeman said that the position of the Flathead Conversation District on the WQD is that another bureaucracy being created. He noted that there are multiple agencies already doing work, and that we just need to implement the laws already on the books.

Caryn Miske explained that this is an issue of funding, and that no other entity has the funding available to launch an effective AIS prevention effort in the basin. The ability of the WQD to levee fees and raise money is unique.

Jim Simpson responded that the Lake County Conservation District was concerned with the creation of another tax and bureaucracy. He believes that the only way the Lake CD would support the WQD was if it could replace other agencies (plural) – other current bureaucracies.

Susan Brueggeman responded that the Study Group completed a gap analysis, to find out what was not being done, and to determine whether the WQD would be an appropriate tool that could be used to fill the identified gaps.

Ed Heger pointed out the natural evolution of the WQD and AIS efforts. He explained that if the FBC Executive Director could pull back from the AIS effort with the creation of a WQD.

Jim Simpson asked if the WQD could help enforce the Water Quality Act if DEQ approved. Susan Brueggeman responded that the Study Group is not trying to use the WQD to regulate under the Water Quality Act.

Jim Simpson inquired about local composition, and the minimum of 5 members. Susan Brueggeman responded the WQD for a two county district would be broad based and would include conservation district commissioners, citizens and others.

Dan Bangeman said that places like the Gallatin (where a WQD exists) do not have all the lake commissions, etc., like the Flathead. He indicated that another big bureaucracy was not needed.

Susan Brueggeman responded that in other areas WQD typically have two or three employees. Each WQD focuses on different issues, but a Lake/Flathead WQD could not take on too much given the funding limitations. Much of the effort would focus on coordinating the AIS prevention effort.

Ed Heger suggested that this conversation be continued in September at the retreat.

Susan Brueggeman concluded by pointing out that the work on the WQD came out of the Large Lakes Conference as a way to protect water quality in Flathead.

**Transboundary Water Quality Research: Ric Hauer**  
**Gravel pit mining: Ric Hauer**

Ric Hauer reviewed the results of the Transboundary baseline data collection effort funded by the FBC with monies provided by the State legislature in 2007.

Currently, there are 5 different mines in the East Kootenai coal seams, with 100 year of history (the Crows Nest coal field extends into the Flathead). For the baseline collection effort, the FLBS developed a sampling design for the Flathead, as well as the Elk river above and below the mining operations.

In the Flathead, nitrate, sulfate and selenium data was collected. Nitrate values are measured in parts per million, with 2 to 4 mg/liter across all sites. In the Elk, above the mines, low to no nitrates were detected, with sites registering 2 to 10 mg/liter. However, below the mines, sites registered 800 to 2000 mg/liter.

Sulfates values at sites in the Flathead were all below 10 mg/liter, but sites below the mining operations in the Elk measured from 50 to above 400 mg/liter. Similar disparities were found for selenium. In the Flathead and the Elk (above the mining operations), sites measured .2 to .7 mg/liter. In contrast, sites in the Elk below the mines measured 6 to 10 mg/liter.

Algae is generated by nitrate loading, so algal presence increases below the mines.

The baseline study also showed a decline in species diversity in the Elk River below the mines. In addition, the study documented a lower total abundance of aquatic insects, with the exception of certain mayflies that feed on algae and are more tolerant of pollution.

A question arose about the presence of didymo in the Flathead. Dr. Hauer stated that didymo has been around a long time, and recently it has taken off, and no one seems to know why.

Ric Hauer then made a brief presentation on the impacts of gravel mining in the alluvial aquifers. He stressed the connectivity between the Flathead River, groundwater, and alluvial aquifers, as well as the adverse impacts of gravel pit mining within the flood plain.

He also pointed out that historically, channels move and gravel shifts. Allowing the channel to shift is important to maintaining the health of the River, the fishery and wildlife habitat. For example, aquatic insects can be found 1 to 2 km from the river in the groundwater. If the preferential flow path is disrupted, habitat is also disrupted or destroyed.

In gravel pits, water interception demonstrates the connectivity between the alluvial aquifer, the River and groundwater. Water levels in gravel pits rise within hours and fall within hours of draw down changes in the river. Therefore, spills or leaks of gas or oil associated with the gravel pit mining operations, also makes its way into the River. He also mentioned the adverse thermal pits of gravel pit mining operations.

Dr. Hauer concluded by inviting the FBC to hold a meeting at the FLBS, and to visit the upgraded the research lab.

### **TMDL update – Ron Steg and George Mathieus.**

Jason Gildea is the TMDL coordinator for EPA. EPA is working the nutrient side of the TMDLs for the flathead basin. The water quality modeling effort is continuing, and EPA is completing technical memos which will inform the modeling effort. The fire technical memo is now complete, and the point source and lakes technical memos are out for review. Ron and George envisioned a summer meeting to look at the status of the TMDL and update the public on progress to date.

A question was raised asking, “once the TMDL is complete, what impact will that have on storm water discharge and pollutant levels?”

Ron Steg replied that the process will look at all the significant nonpoint sources and allocate responsibility to categories of sources. It will not be prescriptive. It will give insight into the nature of the storm water problem as no direct implementing authorities exist in the regulations related to TMDLs. However, it is hoped that other regulatory entities will use this information in their regulatory efforts.

### **Transboundary Update: Caryn Miske and Erin Sexton**

Caryn Miske explained that discussions were underway at the federal level on how to safeguard the BC/MT MOU. She said that the Senators are looking to a federal to federal agreement as opposed to a Provincial to State agreement to provide permanent protection for the Flathead. She noted that the issue of compensation for sunk costs (exploration and other development work) remains outstanding, but options are being considered. Miske also said that it was her understanding the Ktunaxa (First Nations with territory in the BC Flathead) expressed an interest in becoming more involved in the dialogue. The Ktunaxa are also negotiating treaty rights, and they could potentially play a pivotal role.

Erin Sexton announced good news on the transboundary funding. She explained that the data Ric Hauer just presented goes to 2008. In 2009, federal money kicked in for monitoring in the Elk and Flathead and Cathy Barbouletos generously provided funding to supplement shortfalls. Now the USFWS Great Northern Landscape Cooperative will provide funding beginning at the end of June 2010. We will continue to work with the Senators to keep the program going in 2011. In addition, MT FWP will continue the basin-wide distribution and abundance work on fisheries, including a bull trout red count in the fall.

Storm water management/non-point source pollution reduction presentation by Tom Weller, P.E. Mr. Weller discussed the Flathead youth home rain garden (not a wetland), sediment traps used to capture storm water; permeable concrete, the bigfork storm water planning project and the efforts of the storm water planning group.

**Public comment:** None

**New business:** Dan Bangeman brought up the bmp audit and Clint Whitney discussed the need to identify people willing to testify during the 2011 legislative session.

Ed Heger suggested that meeting dates should be scheduled out a year in advance. Caryn Miske agreed that she would send out a “doodle” to members to set this up. The next meeting, a retreat, is scheduled for September 1<sup>st</sup>.

Meeting adjourned.