

Upper Clark Fork River Basin Steering Committee
C/O Gerald Mueller
440 Evans
Missoula, MT 59801
(406)543-0026

October 4, 2007

Senator Jim Elliott
Chairman
Water Policy Interim Committee
C/O Krista Lee Evans
Legislative Environmental Policy Office
Room 171, State Capitol
P.O. Box 201704
Helena MT 59620-1704

Dear Senator Elliott:

I write to you on behalf and at the direction of the Upper Clark Fork River Basin Steering Committee (Steering Committee). A brief synopsis of the Steering Committee's statutory mandate and a list of its current members are enclosed.

At its last meeting, the Water Policy Interim Committee (WPIC) invited comments on the issues that it should prioritize. After reviewing the list of issues prepared by Representative Cohenour, which was sent out by Krista Lee Evans, the Steering Committee proposes that the WPIC focus on exploring three issues:

- **Exempt wells** - The combination of the 35 gallon per minute, 10 acre-feet per year exemption for new wells and existing permit requirements appears in some instances to result in developers using individual wells when community/municipal systems may be a better choice. Exempt wells are also not subject to the adverse effects test required for water rights permits, possibly to the detriment of existing water right holders. While in house domestic water consumptive use may be small, the cumulative effect of many exempt wells used for purposes outside of a house may adversely affect existing users.
- **Water right enforcement** - The WPIC heard at its Thompson Falls meeting that the burden for enforcing water rights falls primarily on individual water right holders through the courts and that the associated costs and delays make enforcement impractical for many. In its February 2006 policy paper entitled "How Will Completion of the Adjudication Affect Water Management in Montana?" the Steering Committee discussed how completion of the adjudication may complicate enforcement even more, as well as options for remedying this situation. A copy of this paper has been supplied to Ms. Evans for distribution to you. The Steering Committee urges WPIC to carefully consider ways to ensure that water rights can and will be enforced.
- **Subdivision permitting** - The Steering Committee is concerned with three aspects of subdivision permitting. The first is that water quality and quantity considerations should be linked and not addressed separately. Second, better guidelines are needed for data compilation, i.e., who collects and evaluates the data that are being accepted in the decision-making. The third area is the roles of local governments, the Department of Environmental

Quality (DEQ), and the Department of Natural Resources and Conservation (DNRC) in the subdivision permitting process. Local subdivision review would benefit from increased coordination with the DEQ. Montanans want detailed information about storm water, wells, wastewater systems, and water quality and how these issues will be addressed and affect their lifestyles and business. DEQ's technical expertise regarding these issues is not generally available during the local government review process. Also, at your Thompson Falls meeting, John Tubbs suggested that developers should seek water right permits earlier in the subdivision process. The Steering Committee urges WPIC to consider these and other aspects of the subdivision permitting process.

Thank you for the opportunity to contribute ideas to your issue prioritization. As you are learning, Montana faces many critical water related challenges. The Steering Committee appreciates the efforts of you and your fellow WPIC members in delving into them.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald Mueller". The signature is fluid and cursive, written over a horizontal line.

Gerald Mueller
Steering Committee Facilitator

The Upper Clark Fork River Basin Steering Committee Legal Mandate

The Steering Committee is one of Montana's oldest collaborative watershed groups. It was created in 1991 pursuant to a state statute, 85-2-338 MCA, which directed it to complete and submit a management plan to the governor and the legislature by December 31, 1994. The plan had to:

- (a) Consider and balance all beneficial uses of the water in the Upper Clark Fork River basin;
- (b) Include a description of the standards applied, the data relied upon, and the methodology used in preparing the plan;
- (c) Contain recommendations regarding the Upper Clark Fork River basin closure as provided in 85-2-336;
- (d) Identify and make recommendations regarding the resolution of water-related issues in the Upper Clark Fork River basin.

The Steering Committee did complete the plan in December 1994 as required.

In 1995, the legislature expended the Steering Committee mandate and amended 85-2-338 MCA to require it to:

- (a) Review the Upper Clark Fork River basin closure and exceptions no less than every 5 years after April 14, 1995, and make recommendations to the legislature regarding necessary changes;
- (b) Prepare and submit a report evaluating the Upper Clark Fork River basin instream flow pilot program as provided in 85-2-439;
- (c) Prepare and submit a report concerning the relationship between surface water and ground water and the cumulative impacts of ground water withdrawals in each subbasin.
- (d) Provide a forum for all interests to communicate about water issues;
- (e) Provide education about water law and water management issues;
- (f) Identify short-term and long-term water management issues and problems and identify alternatives for resolving them;
- (g) Identify the potential beneficiaries of and a funding mechanism for new and expanded water storage sites;
- (h) Assist in facilitating the resolution of water-related disputes;
- (i) Provide coordination with other basin management and planning efforts;
- (j) Advise government agencies about water management and permitting activities;
- (k) Consult with local governments within the Upper Clark Fork River basin; and
- (l) Report periodically to the legislature.

Current Steering Committee Members

Name	Area or Organization Represented	Appointed Entity
Bob Benson	Clark Fork-Pend Oreille Coalition	DNRC Director
Stan Bradshaw	Trout Unlimited	DNRC Director
Marci Sheehan	ARCO	DNRC Director
Dwight Crawford	Deer Lodge Valley	Deer Lodge Conservation District
Bob Bushnell	Lincoln Area Rancher	Lewis and Clark Conservation District
Jim Dinsmore	Hall Rancher	Granite Conservation District
Holly Franz	PPL Montana	DNRC Director
Carol Fox	Natural Resource Damage Program	DNRC Director
Nate Hall	Avista Corporation	DNRC Director
Sen. Dave Lewis	Lewis and Clark County	Lewis and Clark County Commission
Brent Mannix	Big Blackfoot Rancher	North Powell Conservation District
Jim C. Quigley	Little Blackfoot Rancher	DNRC Director
Pat Saffel	DFWP	DNRC Director
Rep. John Sesso	Butte/Silver Bow Planner	Butte/Silver Bow Commission
Jim Struma	Granite County	Granite County Commission
Dan Ueland	Silverbow Rancher	Mile High Conservation District
Jules Waber	Powell County Superintendent of Schools	Powell County Commission

Clark Fork River Basin Task Force

C/O Gerald Mueller

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October 5, 2007

Senator Jim Elliott
Chairman
Water Policy Interim Committee
C/O Krista Lee Evans
Legislative Environmental Policy Office
Room 171, State Capitol
P.O. Box 201704
Helena MT 59620-1704

Dear Senator Elliott:

I write to you on behalf and at the direction of the Clark Fork River Basin Task Force. I reported to the Water Policy Interim Committee (WPIC) about the Task Force membership, mandate, and activities at your September 13 meeting. The Task Force respectfully recommends that your committee consider the following two issues as top priorities for its further deliberations and actions.

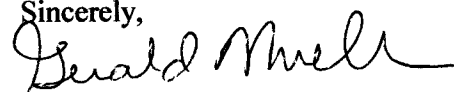
Exempt Wells - Whether and how groundwater wells are regulated is critical to water development and management in the Clark Fork River basin. The Clark Fork is one of the fastest growing basins in the state. According to information presented to you by Curt Martin at your September 13, 2007 meeting, three Clark Fork basin counties, Flathead, Missoula, and Ravalli, accounted for one third of all exempt well certificates statewide for 2005, 2006, and 2007. The topic of exempt wells encompasses related issues such as whether and how incentives should be provided for community water systems, whether domestic use should be exempted from groundwater permits, and the cumulative impacts of exempt wells on the local groundwater supply.

Monitoring and Enforcement - Another issue raised by Mr. Martin in his September 13 presentation is monitoring and enforcement of the existing 35 gallons per minute/10 acre-feet per year exemption. Mr. Martin compared the number of well logs filed with the Montana Bureau of Mines and Geology with exempt certificates issued by DNRC for the period January 1, 1994 through July 1, 2007, and estimated that only 60-70% of exempt well owners are filing for the required completion certificates. He stated that no one monitors and enforces compliance. WPIC also heard that water right monitoring and enforcement is a problem generally in Montana because the burden falls primarily on water right holders who must file court action to obtain compliance with Montana water rules and statutes. The time and expense of litigation renders enforcement impractical for many existing water users. Monitoring and enforcement of water regulation should, therefore, be a priority issue for WPIC.

The Clark Fork Task Force appreciates your committee's outreach to seek advice about its work plan priorities, and we are ready and willing to assist WPIC further, if we can do so.

Thank you.

Sincerely,



Gerald Mueller
Task Force Facilitator