Clark Fork River Basin Task Force

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Representative Chas Vincent, Chair
Environmental Quality Council
P.O. Box 201704
Helena, MT 59620-1704

Representative Walter L McNutt, Chair
Legislative Services Division
PO Box 201704
Helena, MT 59620-1704

Dear Chairman Vincent and Chairman McNutt:

Section 85-2-350 (3)(h)(iii) MCA requires the Clark Fork River Basin Task Force (Task Force) to report annually to the Environmental Quality Council (EQC). Joe Kolman has asked that the Task Force report in writing to EQC and orally to the Water Policy Interim Committee at its July 2010 meeting. Please consider this letter as the required report.

The Task Force and the Montana Department of Natural Resources and Conservation are the only entities with the statutory responsibility to plan for the management of the water in Clark Fork River basin, which encompasses almost all of Montana west of the Continental Divide, a 22,000 square mile area with a population in excess of 320,000 people. Task Force responsibilities are set out in Section 85-2-350 MCA, a copy of which is enclosed. These responsibilities include preparing proposed amendments to the State Water Plan provided for under 85-1-203 related to the Clark Fork River basin and identifying short-term and long-term water management issues and problems and alternatives for resolving any issues or problems identified. Pursuant to this statute, members of the Task Force are appointed by the Director of the DNRC, the entity designated by the Governor's Office. A list of the current members of the Task Force is also enclosed.

The Task Force is presently funded from a Renewable Resource Grant and Loan Program (RRGLP) grant specifically authorized by the 2009 legislature and a small amount of DNRC general funds. The RRGLP grant provided $70,000 and the DNRC general funds are $16,738 for the 2010-2011 biennium. At the Task Force's request, the DNRC Water Resources Division has submitted an RRGLP grant application for $72,000 for the 2012-2013 biennium.

In fiscal year 2010, the Task Force began the process of revising the *Clark Fork Basin Watershed Management Plan* (*Plan*), which it adopted initially in September 2004. Most of the *Plan* was subsequently adopted by DNRC in 2005 as a separate chapter in Part II of the State Water Plan. The revision process began with listening sessions conducted by Task Force members and participants with county, city, and conservation district officials. Based on these sessions, the Task Force agreed on an initial list of watershed management plan revision work

plan topics. Over the next fiscal year, the Task Force will convert these topics into a work plan and begin implementing it.

Two issues are likely to be a key focus for the Task Force as it revises the *Plan*, drought planning and the Hungry Horse initiative. Section 85-1-203 (3)(c) provides that the Clark Fork basin water management plan must include an analysis of the effects of frequent drought and new or increased depletions on the availability of future water supplies. The 2004 *Plan* did not address drought, so the Task Force is considering how to do so in the plan revision.

The Hungry Horse initiative addresses the most important water management issue in the basin - no water is reserved for future use in the Clark Fork. This issue caused the creation of the Task Force in 2001. Hydropower water rights at the bottom of the basin use the entire flow of the river almost all of the time. This means that the legal availability of water for new water rights in the basin is questionable and water uses based on right rights junior to the hydropower rights are at risk to a water right call most of the time. Also, the State of Montana, the Confederated Salish and Kootenai Tribes, and the US government are negotiating reserved water rights for the Flathead Reservation. While the amount of the CSKT rights is subject to negotiation, the priority date of these rights is likely to be 1855. The CSKT will, therefore, have the most senor water rights in the basin. PPL Montana is in the process of amending its 1920 hydropower and storage water rights at Kerr Dam and these rights may also constrain water right permitting in the Flathead basin above the dam. The middle and lower portions of the Clark Fork basin including the Flathead basin outside of the reservation are currently open to new water right permits. However, to get a new surface or groundwater permit in these portions of the basin, an applicant must demonstrate that the new use would not adversely affect the lower basin hydropower water rights, the Kerr Dam water rights, and/or the CSKT reserved water rights.

Hungry Horse Reservoir, located near the top of the basin on the South Fork of the Flathead River Basin, was constructed and is operated by United States Bureau of Reclamation (Bureau) "(f)or the purpose of irrigation and reclamation of arid lands, for controlling flood, improving navigation, regulating the flow of the South Fork of the Flathead River, for the generation of electric energy and for other beneficial uses primarily in the State of Montana, but also for downstream uses."[1] Water stored in Hungry Horse reservoir could both provide for new uses and increase the security of water uses based on water right junior to the hydropower rights and the CSKT rights. Hungry Horse water could be provided to support new surface water uses directly and to mitigate the impacts of new groundwater uses on surface water. The Bureau stores 3.5 million acre feet of water in Hungry Horse in most years. The DNRC has estimated that new uses in the Clark Fork basin would consume from 50,000 to 100,000 acre-feet of water per year over the next 50 years. At the suggestion of the Task Force and the direction of the 2007 legislature, DNRC requested a contract with the Bureau for 100,000 acre-feet of Hungry Horse water per year over the next fifty years to support basin water use.

At the request of the Task Force, the 2007 legislature modified state statutes to authorize the state to contract for up to 1,000,000 acre-feet of water stored in federal reservoirs in Montana and to lease that water to water users in the basin of the reservoir. Water stored in federal reservoirs may be an increasingly important source of water in other basins throughout the state, and the Hungry Horse initiative may be a model for other basins. Also at the Task Force's request, the 2007 legislature appropriated $260,000 to pay for the first step in the Hungry Horse

[1]US Code Title 43, Chapter 12, Subchapter XVII, Section 593a

contracting process, a reallocation of costs of the Hungry Horse project to include municipal and industrial uses (M&I). This reallocation is necessary because the original 1960 cost allocation did not include M&I.

The Bureau last month issued a draft cost reallocation report which appears favorable to the state's contract request. The report allocated only 2.7% of the project costs to M&I. A DNRC economist used information from the report to make a rough estimate of cost of M&I water and found it to be $10/acre-foot in 2009 dollars. To be clear, the cost reallocation does not set the contract price that the Bureau would charge the state for Hungry Horse water. The actual price will be set by the contract negotiation. The cost reallocation information does, however, give an indication of the level of that price.

Before the contract negotiation can be completed, the Bureau will have to complete any environmental analysis which it determines is required under the National Environmental Policy Act of 1969 (NEPA). The party requesting a contract with BOR is expected to pay all BOR costs associated with the contract request including those for NEPA and other compliance activities, contract negotiations and approval, and special studies such as a cost reallocation analysis. The memorandum of understanding between the Bureau and the DNRC providing for the contract negotiation states, "The anticipated level of NEPA compliance is an Environmental Impact Statement (EIS), and is estimated to cost $1 to $2 million." DNRC has not included funding to pay for the Bureau's NEPA compliance analysis in its 2012-2013 budget request. While $1 to $2 million may appear large, it should be viewed in the context of the water use it would facilitate. Paying $1 million to complete the NEPA process might double the cost of Hungry Horse water, raising it to $20 per acre-foot. This would still be a relatively cheap price to acquire 100,000 acre-feet per year for additional consumptive uses in the Clark Fork basin for the next 50 years. This 100,000 acre-feet per year would be pre-approved mitigation water for new basin groundwater development.

The Task Force recognizes that the next legislature faces a large structural deficit and that state funding may not be available to pay for the Bureau's NEPA compliance analysis during the coming biennium. An alternative that might be pursued is seeking federal funding to pay for the NEPA compliance through the Montana Congressional delegation.

In closing, given the constraints that exist in the Clark Fork basin on the legal availability of water for new and junior uses, finding an affordable source of water to support new water uses and to protect junior uses is critical to the basin's future. Water stored in Hungry Horse may be that source.

The Task Force would be pleased to answer any questions about this report.

Sincerely,

Gerald Mueller

Gerald Mueller
Task Force Facilitator

Enclosures: 85-2-350 and Task Force member list

85-2-350. Clark Fork River basin task force -- duties – water management plan. (1) The governor's office shall designate an appropriate entity to convene and coordinate a Clark Fork River basin task force to prepare proposed amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin. The designated appropriate entity shall:

(a) identify the individuals and organizations, public, tribal, and private, that are interested in or affected by water management in the Clark Fork River basin;

(b) provide advice and assistance in selecting representatives to serve on the task force;

(c) develop, in consultation with the task force, appropriate opportunities for public participation in studies of water management in the Clark Fork River basin; and

(d) ensure that all watershed and viewpoints within the basin are adequately represented on the task force, including a representation from the following:

(i) the reach of the Clark Fork River in Montana below its confluence with the Flathead River;

(ii) the Flathead River basin, including Flathead Lake, from Flathead Lake to the confluence of the Flathead River and the Clark Fork River;

(iii) the Flathead River basin upstream from Flathead Lake;

(iv) the reach of the Clark Fork River between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River;

(v) the Bitterroot River basin as defined in 85-2-344; and

(vi) the Upper Clark Fork River basin as defined in 85-2-335.

(2) Task force members shall serve 2-year terms and may serve more than one term. The Confederated Salish and Kootenai tribal government must have the right to appoint a representative to the task force.

(3) The task force shall:

(a) identify short-term and long-term water management issues and problems and alternatives for resolving any issues or problems identified;

(b) identify data gaps regarding basin water resources, especially ground water;

(c) coordinate water management by local basin watershed groups, water user organizations, and individual water users to ensure long-term sustainable water use;

(d) provide a forum for all interests to communicate about water issues;

(e) advise government agencies about water management and permitting activities in the Clark Fork River basin;

(f) consult with local and tribal governments within the Clark Fork River basin;

(g) make recommendations, if recommendations are considered necessary, to the department for consideration as amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin; and

(h) report to:

(i) the department on a periodic basis;

(ii) the environmental quality council annually; and

(iii) the natural resources and commerce appropriations subcommittee each legislative session.

History: En. Sec. 1, Ch. 447, L. 2001; amd. Sec. 1, Ch. 434, L. 2005.

Clark Fork River Basin Task Force
October 2009

Name	Organization	Area/Interest Represented
Marc Spratt	Flathead Conservation District	Flathead Basin above Flathead Lake
Nate Hall	Avista	Hydropower Utilities
Holly Franz	PPL Montana	Hydropower Utilities
Gail Patton	Sanders County Commissioner	Basin Local Governments
Arvid Hiller	Mountain Water Company	Municipal water companies and the Clark Fork River Watershed between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River
Caryn Miske	Flathead Basin Commission	Flathead Lake
Ted Williams	Flathead Lakers	Flathead Lake
Steve Hughes	Joint Board of Control	Flathead River watershed below Flathead Lake to the confluence with the Clark Fork River
Jim Elliott		Lower Clark Fork watershed
Harvey Hackett	Bitter Root Water Forum	Bitterroot River watershed
Fred Lurie	Blackfoot Challenge	Blackfoot River watershed
Jim Dinsmore	Granite Conservation District & Upper Clark Fork River Basin Steering Committee	Upper Clark Fork River watershed
Brianna Randall	Clark Fork Coalition	Conservation/environmental organizations
Bill Gardner	Liberty Drilling	Montana Water Well Drillers Association
Charles Lapp	Flathead Building Association	Building industry in the Flathead Valley and Lake County
Verdell Jackson, *Ex Officio*	State Representative	Senate District 5