

Testimony in Support of HB 444
Before the House Appropriations Committee
On Behalf of the Clark Fork River Basin Task Force
By Gerald Mueller
February 9, 2007

Chairman Sinrud, members of the committee, thank you for the opportunity to testify in support of HB 444. My name is Gerald Mueller. I live at 440 Evans in Missoula. My telephone number is 543-0026.

This bill appropriates \$45,000 per year for each year of the coming biennium to fund the Clark Fork River Basin Task Force. A budget for the expenditure of these funds is attached.

The Task Force was created in 2001 pursuant to a statute passed because of concerns about the security of the water rights in the Clark Fork River basin and about the basin water supply and management. The statute that created the Task Force directed it to write a watershed management plan for the entire Clark Fork River basin. The plan had to identify options for protecting the security of existing basin water rights and provide for the development and conservation of basin water in the future. The Task Force completed the plan, the *Clark Fork Basin Watershed Management Plan*, in September 2004 and presented it the Governor and the Legislature. Much of the *Plan* was subsequently adopted into the State Water Plan.

By statute, Task Force members must be representative of the Clark Fork River basin's water users in terms of both geography and interests. A list of current members, all of whom represent water users, is attached.

The Task Force is currently the only entity that is planning for future basin water development and conservation while providing for the protection of existing water rights. No water is presently reserved for future basin water use. The *Plan* found that the Clark Fork River basin does have a water supply problem. Existing hydropower water rights in the lower basin are not filled most of the time. Consistent with existing water law, this fact appears to mean that no more water is legally available to appropriate for new water uses anywhere in the basin. It also means that some 7,800 water rights that are junior to the lower basin rights are at risk to interruption by a water rights call most of the time. The *Plan's* finding was recently supported by a proposed decision by a DNRC hearing examiner to deny a water right permit to the Thompson Falls cogeneration plant. The examiner concluded, in part, "The Applicant has not proven that water can reasonably be considered legally available..." because a lower basin hydropower utility's water right is expected to be filled only 16 to 24 days each year and thus the applicant would be subject to a water rights call on all other days.

The Task Force through the *Plan* has identified a possible solution to the legal availability issue. The Task Force is pushing the state to enter into negotiations for a contract for water now stored in Hungry Horse Reservoir. The state could then lease this water to new and existing basin water users. At the Task Force's request, the 2005 legislature passed HJ3 which urged the Montana Department of Natural Resources and Conservation (DNRC) to enter into negotiations with the Bureau of Reclamation (BOR) to "...determine the availability and cost of water stored behind Hungry Horse Dam for which the State of Montana might contract to support existing water use and future water development in the Clark Fork River basin." At the Task Force's urging, DNRC has met with BOR Regional Director MacDonald to begin the negotiating process. After that meeting, DNRC wrote to Mr. MacDonald to clarify the dollar and time requirements to complete a Hungry Horse contract, and he responded with the requested information. Because Mr. MacDonald did not reply until December

6, no funds were included for the contracting process in the Governor's budget. The Task Force, therefore, has requested, and Rep. Taylor has agreed to sponsor, a bill that would appropriate funds to DNRC to begin the contracting. The Task Force also examined the existing state statutes regarding water marketing and found that changes are necessary to allow the state to reserve water now stored in federal reservoirs like Hungry Horse for use by Montana water users. The Task Force has requested, and Senator Jackson, an ex officio Task Force member, is sponsoring a bill to amend the water marketing statutes.

Without the Task Force, these activities likely would not have or be occurring. Without the Task Force, the Clark Fork River basin would be headed towards a water supply conflict and litigation that would be much more expensive to resolve than the \$145,000 of state dollars that has funded the Task Force to date.

The Task Force has also been active in another area, ground water. The *Plan* found that ground water is increasingly important as a source of water in the basin. However, not enough is known about the capacity, refill rates, and development rates of the basin's aquifers. The Task Force therefore last year sponsored two ground water conferences, one focused on technical issues and the other on policy issues. These conferences were attended by about 150 people. A result of the technical conference, the Task Force has requested legislation before this session (SB 324) to improve the way ground water data is collected and made available to the public for planning and regulatory activities.

Not approving HB 444 would save the state \$90,000. It would cost the state a collaborative and representative group of volunteer basin water users who are actively pursuing solutions to the Clark Fork River basin's water supply and management issues. Without the Task Force, efforts to reserve water in Hungry Horse reservoir for use by new and existing basin water users would likely falter. DNRC has been aware of the supply problem for some twenty years, but on its own has not successfully addressed it. The Task Force, with assistance from DNRC, has identified a new approach and is catalyzing action in pursuit of it.

Article IX, Section 3, of the State Constitution provides that:

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Through the Task Force, basin water users are helping the state to meet this constitutional mandate at very low costs.

It would be penny wise and pound foolish not to provide funding for the Task Force to continue its work on behalf of basin water users. Please act favorably on HB 444.

Thank you.

Clark Fork River Basin Task Force 2007-2008 Budget Request

Request

The Clark Fork River Basin Task Force (Task Force) requests a total of \$90,000 for the biennium, or \$45,000 per year. This funding would allow the Task Force to continue to carry out its mandate set out at 85-2-350 MCA and discussed below. The annual budget request breakdown is as follows:

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| Facilitator Costs (salary and expenses) - | \$20,000 |
| Task Force Costs (meeting costs & member mileage) - | \$5,000 |
| Project Costs (printing, etc.) - | \$5,000 |
| Communication/Outreach (quarterly newsletter, etc.) - | \$5,000 |
| Conference - | \$10,000 |
| Total - | \$45,000 |

Background

The Task Force was created in 2001 pursuant to 85-2-350 MCA. Its members are chosen by the DRNC Director to ensure balanced geographic and water interest representation of the Clark Fork River basin. A list of the current members is attached. In September 2004, the Task Force adopted the *Clark Fork Basin Watershed Management Plan (Plan)*, which addressed the protection of existing water rights and the future development and conservation of basin water. Most of the *Plan's* recommendations were adopted into the State Water Plan. Two key issues identified in the *Plan* include the constraints imposed by lower basin hydropower rights on both future water development and existing uses based on water rights junior to the hydropower rights, and the increasing importance of groundwater for future water development. The *Plan* found that more information is needed about basin groundwater. In response to the first issue, the Task Force won approval in the 2005 legislature of HJR3 which directed the DNRC to negotiate with the Bureau of Reclamation concerning the amount and cost of water stored in Hungry Horse Reservoir that the state might obtain through a contract to support existing and future basin water uses. These negotiations have just begun. Concerning the second issue, the Task Force convened two groundwater conferences in the fall of 2006, one focused on technical concerns and one on policy concerns.

Task Force Benefits

As just stated, the Task Force has provided the means for a balanced group of basin water interests to make important contributions to addressing basin water issues and management. The ultimate value of the 2004 *Plan* will depend on its implementation. The Task Force has been and will continue to be the driving force behind that implementation. Important basin water issues remain. Unlike other basins in the state, no provision has been made in the Clark Fork for reserving water for future use. Hungry Horse water is therefore a critical resource for the basin and completing the negotiations with the BOR is vital. The Task Force is needed to motivate the negotiations and provide basin water interest input to them. Basin water management is changing in response to the recent TU vs. DNRC Supreme Court decision, the ongoing water right adjudication, and the recent acknowledgment by a DNRC hearing examiner's of the lower basin hydropower water rights on the legal availability of water for new water rights. Practical means for integrating groundwater into the "first-in-time, first-in-right" water rights system of water administration and for accommodating surface and groundwater interactions must be found. Growth related water development challenges, including subdivision regulation, must be faced. With the requested funding over the next biennium, the Task Force can continue making important contribution to these and other issues.

Clark Fork River Basin Task Force

| Name | Organization | Area/Interest Represented |
|---------------------------------------|---|---|
| Marc Spratt | RLK Hydro | Flathead Basin above Flathead Lake |
| Nate Hall | Avista | Hydropower Utilities |
| Holly Franz | PPL Montana | Hydropower Utilities |
| Matt Clifford | Clark Fork Pend Oreille Coalition | Conservation/Environment |
| James Steele | Confederated Salish and Kootenai Tribes | Indian Tribes |
| Gail Patton | Sanders County Commissioner | Basin Local Governments |
| Vacant | | Clark Fork River Watershed below Flathead River confluence |
| 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 |
| Elna Darrow | Flathead Basin Commission | Flathead Lake |
| Bill Slack | Joint Board of Control | Flathead River watershed below Flathead Lake to the confluence with the Clark Fork River |
| 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 |
| Verdell Jackson, <i>Ex Officio</i> | State Representative | House District 6 |
| Joey Jayne <i>Ex Officio</i> | State Representative | House District 15 |
| Jim Shockley <i>Ex Officio</i> | State Senator | Senate District 45 |