

**Clark Fork River Basin Task
Force Report to Water Policy
Interim Committee**

July 26-27, 2010

Task Force

- **Statutory entity – 85-2-350 MCA**
- **Assigned to first write and then propose amendments to basin watershed management plan.**
- **Members appointed by DNRC Director.**
- **Section 85-2-350 (3)(h)(iii) MCA requires the Task Force to report annually to the Environmental Quality Council (EQC).**

Report Focus

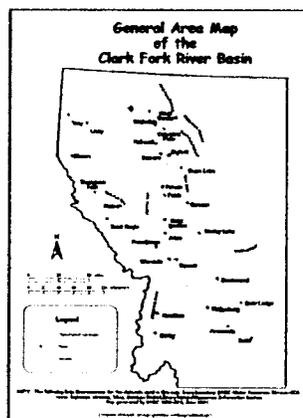
- Revision of the 2004 Clark Fork Basin Watershed Management Plan
- Hungry Horse initiative

Watershed Management Plan Revision

- 85-1-203 - Sections of the state water plan must be completed for the Missouri, Yellowstone, and Clark Fork River basins, submitted to the 2015 legislature, and updated at least every 20 years.
- In 2005, DNRC adopted a Clark Fork Basin chapter of the State Water Plan based on the 2004 plan adopted by the Task Force.
- Task Force is beginning an updating 2004 plan.
- New issue - Section 85-1-203 (3)(c) provides that the plan must include an analysis of the effects of frequent drought and new or increased depletions on the availability of future water supplies.
- Initiated the revision process with Task Force member listening sessions with basin local governments and conservation districts.

Most Important Basin Water Management Issue

- No water reserved for future basin uses.
 - Clark Fork largest river by volume leaving state.
 - Important constraints on the legal availability of water for future uses.



Sources of the Availability Constraints

- First-in-time, first-in-right water allocation system
- Hydropower water rights
- Tribal water rights

Hydropower Constraints

- Hydropower water rights at the bottom of the basin use the entire flow of the river almost all of the time.
 - Legal availability of water for new water rights in the basin may be 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.
 - Constraint confirmed by Thompson River Lumber Company decision which DNRC subsequently clarified not to apply above the CSKT Reservation Boundary.
- PPL Montana is in the process of amending its 1920 hydropower and storage water rights at Kerr Dam.
 - These rights may constrain water right permitting in the Flathead basin above the dam.

Hydropower Constraints

- Hydropower operators are required by state and federal regulations to maintain water rights that match the powerhouse capacity.
 - Hydropower rights holders are very reluctant to subordinate their rights, just as would be the case with other water users.
 - Task Force has never gone on the record asking to subordinate these rights, and has no proposal to do so now.
- Hydropower rights are non-consumptive, but must be recognized in the permitting process.
- Even though no hydropower rights holder has made a call on a junior water rights holders in this basin, there is concern this could happen.

Tribal Constraints

- State, CSKT, and US negotiating CSKT reserved water rights.
 - CSKT rights will likely have a 1855 priority date.
 - Depending on their size, these rights may constrain water right permitting in the Flathead basin above the reservation.

Basin Solution - Hungry Horse Initiative

- 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.
- Key questions:
 - Is Hungry Horse water available for Montana water uses?
 - At what price?
 - How would basin water users obtain access to Hungry Horse water?

Two Mechanisms to Access Hungry Horse Water

- State contract with the Bureau of Reclamation
 - DNRC has initiated the contracting process requesting 100kaf annually for new municipal and industrial consumption uses over 50 years.
 - Bureau has issued draft cost reallocation study.
 - Next step – NEPA compliance.
- CSKT water rights compact
 - CSKT has requested 128kaf of additional water annually; if all of this water not consumed on the reservation, then it may be available for other basin uses.

State-Bureau Contract Hungry Horse Water Availability

- Availability for contract will be determined by NEPA compliance.
- Bureau of Indian Affairs final environmental impact statement on the Flathead Lake drought plan included the following:

During the NEPA scoping process, it became clear that relying substantially on water releases from the Hungry Horse Project to offset drought impacts at the Kerr Project was untenable. The Hungry Horse Project has myriad regulatory requirements unrelated to Kerr Project operations that BOR (the Hungry Horse Project operator) must address. In most cases, environmental mitigation, generation requirements, and operational restrictions at Hungry Horse would substantially limit, if not eliminate water available for the Kerr Project during drought years - **greatly limiting the ability of PPL Montana's proposed process to effectively balance all competing uses of the available water supply.**

State-Bureau Contract Price of Hungry Horse Water

- Information in the Bureau cost allocation study indicates that the cost of Hungry Horse water may be on the order of \$10/acre-foot.
 - Estimate only – not contract price, which remains to be negotiated.
 - Bureau has estimated NEPA compliance cost at \$1-2 million.
 - The state or the federal government would pay these costs.
 - \$1 million amortized over 50 years would raise water cost by less than a \$1/acre-foot per year.

Reserved Water Rights Compact Hungry Horse Water Availability

- CSKT-State-US compact will be directly approved by the Congress and therefore not subject to NEPA.
- Bureau has modeled a CSKT diversion scenario and determined that it would require 90 kaf of Hungry Horse storage and 38 kaf of natural flow annually.
 - Modeling assumed downstream and Montana native endangered fish flow requirements and examined impacts of new Tribal diversions on Hungry Horse reservoir levels and Flathead River flows at Perma.
 - No show stoppers.

Reserved Water Rights Compact

- After examining the Bureau modeling, the State, CSKT and the US decided to continue negotiating use of Hungry Horse water for the compact.
- State has decided that compact negotiations will take precedence and is not now pursuing the Bureau contract for Hungry Horse water.

Task Force Questions

- How would an allocation of Hungry Horse water to CSKT provide for new municipal and industrial consumptive uses above and below the reservation?
- What would be the price of this water to basin water users?

Summary

- Hungry Horse water storage will be key to Clark Fork basin water management.
- Bureau cost reallocation study appears favorable for a state contract for basin municipal and industrial uses.
- Completing the contract would require NEPA compliance at an estimated \$1-2 million.
- These funds are not in DNRC's budget request.
- The state has decided to pursue Hungry Horse water through the compact negotiations with the CSKT and the US.
- How the compact would provide water off of the reservation to basin water users and the price of the water remains to be addressed.