

**Testimony of the Upper Clark Fork River Basin Steering Committee
On LC9005 and LC9999
Before the Water Policy Interim Committee
By Gerald Mueller, Steering Committee Facilitator
September 8, 2010**

The Upper Clark Fork River Basin Steering Committee was created in 1991 pursuant to 85-2-338 which directed it to write a water management plan for that portion of the Clark Fork River basin above the Milltown Dam. Since 1997, each of the basin's six counties and six conservation districts has had the opportunity to appoint a member. The DNRC Director has the responsibility to appoint an additional ten members to ensure that the committee membership includes a balance of affected basin interests. A list of current members and the provisions of 85-2-338 are attached.

LC9005

At the request of its county commission members, the Steering Committee supports LC9005 because it clarifies the authority of local governments to require, under certain conditions, public water and sewer systems instead of individual wells and septic systems.

LC9999

A fundamental precept of the initial *Upper Clark Fork River Basin Water Management Plan* adopted by the Steering Committee in 1994 was the protection of existing water rights. One way to protect existing rights is to facilitate objections to new water right permits and changes that would adversely affect existing rights. The Steering Committee therefore successfully sought a statute in 1995 to allow a successful objector in a hearing on a new permit or change approval to bring an action in district court for costs and attorney fees in the upper Clark Fork. As noted by WPIC staff, this statute was temporary, and a permanent statute not limited to the upper Clark Fork passed in 2005. The 2005 statute provided that the prevailing party in a district court appeal of a DNRC permit application decision shall be awarded reasonable costs and attorney fees. LC9999 would award reasonable costs and attorney fees in appeals of water right permits and changes at the discretion of the district court judge.

The Steering Committee supports LC9999 because it believes that a mandatory award of fees and attorney costs may inhibit rather than facilitate appeals by existing water right holders. For some, the risk of being forced to pay costs and fees is too great. LC9999 would also restore inclusion of changes that was present in the 1995 legislation.

Upper Clark Fork River Basin Steering Committee Members

Name	Area or Organization Represented	Appointment Entity	Date Appointed
Bob Benson	Clark Fork-Pend Oreille Coalition	DNRC Director	1997
Stan Bradshaw	Trout Unlimited	DNRC Director	1991
Bob Bushnell	Lincoln Area Rancher	Lewis and Clark Conservation District	2010
Maureen Connor	Granite County Commissioner	Granite County Commission	2010
Don Despain	Deer Lodge Valley	Deer Lodge Valley Conservation District	2010
Jim Dinsmore	Hall Rancher	Granite Conservation District	1991
Holly Franz	PPL Montana	DNRC Director	1991
Carol Fox	Natural Resource Damage Program	DNRC Director	2003
Rebecca Guay	Anaconda-Deer Lodge County	Anaconda-Deer Lodge County Commission	2010
Nate Hall	Avista Corporation	DNRC Director	2007
Michele Landquist	Missoula County Commissioner	Missoula County Commission	2010
Sen. Dave Lewis	Lewis and Clark County	Lewis and Clark County Commission	2006
Jim C. Quigley	Little Blackfoot Rancher	DNRC Director	1991
Pat Saffel	DFWP	DNRC Director	2003
Marci Sheehan	ARCO	DNRC Director	2007
Rep. John Sesso	Butte/Silver Bow Planner	Butte/Silver Bow Commission	1997
Jules Waber	Powell County Superintendent of Schools	Powell County Commission	1997

85-2-338. Upper Clark Fork River basin steering committee -- membership and duties -- comprehensive management plan. (1) There is an Upper Clark Fork River basin steering committee. The steering committee has 22 members, who must be appointed as follows:

(a) Each of the six conservation districts in the basin may appoint a member.

(b) Each of the six county commissions in the basin may appoint a member.

(c) The department director shall appoint the remaining 10 committee members and any additional committee members not appointed under subsections (1)(a) and (1)(b) and shall ensure that committee membership includes a balance of affected basin interests and is in conformance with subsection (2).

(2) Steering committee members must be selected on the basis of their knowledge of water use, water management, fish, wildlife, recreation, water quality, and water conservation. Representation on the committee must include but is not limited to representatives from affected:

(a) agriculture;

(b) conservation districts;

(c) departments of state government;

(d) environmental organizations;

(e) industries;

(f) local governments;

(g) reservation applicants;

(h) utilities; and

(i) water users not otherwise represented.

(3) Except as provided in subsection (4), steering committee members shall serve 4-year terms and may serve more than one term.

(4) Initial term lengths must be staggered in conformance with the following:

(a) conservation district appointees shall initially serve for 4 years;

(b) county commissioner appointees shall initially serve for 2 years; and

(c) as determined by the department, half of the department appointees shall initially serve for 2 years and the remainder shall initially serve for 4 years.

(5) The steering committee, consistent with the Upper Clark Fork River basin comprehensive management plan, shall:

(a) review the Upper Clark Fork River basin closure and exceptions as provided in 85-2-336 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.

History: En. Sec. 4, Ch. 741, L. 1991; amd. Sec. 3, Ch. 487, L. 1995; amd. Sec. 2, Ch. 353, L. 1997.