

Clark Fork River Basin Task Force Report

**Verdell Jackson, Chair
555 Wagner Lane
Kalispell, MT 59901
(406)756-8344**

September 10, 2012

Attention: Water Policy Interim Committee

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). We have also been asked to report to Water Policy Interim Committee in writing and orally to WPIC. This is that report.

The Task Force and the Montana Department of Natural Resources and Conservation (DNRC) 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. The average annual discharge from the Clark Fork River is 20,000cfs, over two times that of the average annual discharge from the Missouri River. 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 2011 legislature approved a Renewable Resource Grant and Loan Program (RRGLP) grant of \$63,000 for the 2012-2013 biennium. Although it has in the past, for next two years, the Task Force is not receiving DNRC general funds. The scope of work for the grant has not been approved for the 2012-2013 biennium. Therefore the Clark Fork Task Force has not met since May. Also, Gerald Mueller had to reapply to be the Task Force Facilitator. He reapplied but later the "request for proposal" was withdrawn. The scope of work has been rewritten and will be considered on September 17 at the Task Force meeting in Missoula.

In fiscal year 2012, the Task Force continued to work on two topics related to the Clark Fork Basin Watershed Management Plan, which it adopted initially in September 2004. The two topics are drought planning and the Hungry Horse initiative. Section 85-1-203 (3)(c), enacted in 2009, provides that the Clark Fork Basin Water Management Plan (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. During the past year, at the Task Force request, DNRC entered into a contract with the UM Department of Geography to support the work of a graduate student who is writing a masters thesis entitled "An Assessment of Drought Climatology, Vulnerability, and Mitigation in the Clark Fork Fiver Basin of Montana." This thesis is scheduled to be

completed during the coming fiscal year and will provide important information for the Task Force's consideration of a basin drought plan for 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 is one of the issues that 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 to support new or expanded water uses in the basin is questionable and water uses based on 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 (CSKT), 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 or earlier in some instances. The CSKT will, therefore, have the most senior water rights in the basin. PPL Montana has 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 hence mitigation is generally required.

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) "for 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. Hungry Horse holds about 3.5 million acre-feet, and the Bureau stores and releases about 1.65 million acre-feet in a typical year. 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.

The original plan was to contract for water with the Bureau for 100,000 acre-feet of Hungry Horse water per year over the next fifty years to support basin water use. During this past year, the Task Force learned that the state has changed its focus for reserving Hungry Horse water from a Bureau contract to the CSKT reserved water rights compact. The CSKT have proposed including in the compact supplemental water for the Tribes that would allow depletion up to 128,000 acre-feet per year of water from the mainstem of the Flathead River, backstopped by up to 90,000 acre-feet of water released from Hungry Horse Reservoir. In response to this proposal, the state has requested that 11,000 acre-feet of the Tribes' supplemental water allocation be set aside for lease to mitigate future domestic and municipal development in western Montana. While 11,000 acre-feet is substantially less than the 100,000 acre-feet sought via a Bureau contract, a Compact Commission attorney has explained to the Task Force that the state expects that a total of 83,000 af to be available for consumption on a firm basis as a result of the CSKT

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

supplemental water request. The state expects that 11,000 acre-feet would provide water for 50,000 new houses over the next fifty years in Flathead County.

At the last Compact Commission meeting I questioned the staff how the 11,000 acre-feet reserved for domestic and municipal development in western Montana would be priced and the mechanics of how an end user would obtain legal access to the water from the Tribes. The Compact Commission staff responded that none of that information is available. The Compact Commission has not addressed the mechanics of the transfer of the water from the Tribes to basin water. The Task Force remains actively interested in both these issues.

The Task Force is also considering ways to manage the basin water supply by storing high spring flows in the ground to provide flood control and mitigation for new water development. Traditional water management has stored high flows in lakes and reservoirs to provide flood control, irrigation, hydropower generation, fish flows and habitat, and recreation. Two of the largest storage reservoirs in the US portion of the Columbia River basin are located in Montana, Lake Koocanusa which is created by Libby Dam on the Kootenai River and the Hungry Horse Reservoir. In 2024, the Columbia Treaty between the US and Canada expires. This treaty has facilitated management of the system of dams in the Columbia River basin in Canada and the US, particularly for flood control, hydropower, and flows needed by threatened and endangered anadromous fish stocks. In conjunction with the Montana Bureau of Mines and Geology, the Task Force is proposing to conduct an analysis to determine how much water might be stored in Clark Fork basin aquifers, where it might be stored, and who might benefit from the storage. Increased storage of basin high spring flows may provide a means to mitigate for the loss of management flexibility because of the expiration of the Columbia Treaty.

Finally, this past spring, the Task Force initiated semi-annual conferences on the basin's annual water supply outlook. In May at the Water Supply Outlook Conference, the Task Force invited representatives of the National Weather Service, Natural Resources Conservation Service, US Geological Survey, US Bureau of Reclamation, DNRC, and the Governor's Drought Advisory Committee to discuss the water outlook for the coming water year based on the snowpack, weather forecasts, and water storage levels.

I would be pleased to answer any questions about this report.

Kind regards,

Verdell Jackson
Clark Fork River Basin Task Force, Chair

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
Ross Miller	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
Harvey Hackett	Bitter Root Water Forum	Bitterroot 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
Verdell Jackson,	State Senator	Senate District 5
Dave Wanzenried	State Senator	Senate District 49