

## **BEIPC MEETING MINUTES**

Basin Environmental Improvement Project Commission  
November 17, 2010,  
9:00 a.m. - 4:00 p.m.  
Centennial Distributing, 701 W. Buckles, Hayden, ID

### Attendees:

Mr. Terry Harwood (Executive Director)

### Commissioners Present:

Mr. Jack Buell  
Mr. Jon Cantamessa (Chair)  
Mr. Phillip Cerner  
Mr. Rick Currie (Vice-Chair)  
Mr. Curt Fransen  
Ms. Toni Hardesty  
Mr. Dennis McLerran  
Mr. Grant Pfeifer

### Alternates Present:

Mr. Curt Fransen  
Mr. Vince Rinaldi

### Staff Present:

Ms. Jeri DeLange  
Mr. Dave George  
Mr. Rob Hanson  
Mr. Ed Moreen  
Ms. Rebecca Stevens

- 1) Call to Order/Introductions: The BEIPC Chair, Commissioner Jon Cantamessa (Shoshone County), called the meeting to order at 9:03 a.m. and led everyone in the flag salute.
- 2) Approval of BEIPC Draft Meeting Minutes for BEIPC Meeting for August 18, 2010. Ms. Jeri DeLange (BEIPC) noted a correction to the attendee list. A motion to approve the draft minutes as corrected was made by Commissioner Jack Buell (Benewah County), and seconded by Commissioner Rick Currie (Kootenai County). The minutes were approved as corrected.
- 3) Presentation of Final Draft 2011 BEIPC Work Plan: The TLG Chair, Ms. Rebecca Stevens (CDA Tribe) provided a brief overview of the work plan process. She mentioned that the TLG agreed at the TLG meeting on October 21 to recommend approval of the final draft work plans by the Basin Commission.

Commissioner Phillip Cerner (CDA Tribe) commented about the process and changes that have occurred as a result of the Asarco Trust Settlement. He asked the Basin Commissioners how the Commission will function with the new Trust.

Mr. Terry Harwood (BEIPC) responded that they have identified what part of the work will be performed next year by the EPA and the State of Idaho. There is a section on remedy protection that the Trustee may work on next year, but it's not a long list because there is no ROD Amendment yet. Mr. Harwood explained that the majority of the Trustee work needs to be developed and included in the ROD Amendment before it's put into the work plan. Under the EPA's adaptive management process, they will develop a work plan with the EPA and the Trustee; and it will become part of the Basin Commission's one and five-year work plans.

Commissioner Cantamessa said that the Trustee, Mr. Dan Silver, will be at the meeting later today and that there may be additional discussion at that time. He suggested that the Basin Commission could revisit the one-year plan and amend it as necessary for the work that needs to get done next summer, but that the BEIPC needs to proceed with the document today as the next meeting is not until February 2011. Mr. Harwood acknowledged that the BEIPC has amended the work plan as needed in the past.

Mr. Harwood then presented the work plan sections to the Basin Commission for their review. Proposed work includes the following:

- Repository Development and Management;
- Basin Property Remediation Program (BRPP);
- Blood Lead Screening in Children;
- Recreational Use Areas;
- Property Protection Projects;
- Upper Basin Remedies;
- Lower Basin Remedies; and
- Monitoring Program.

Under repositories, Commissioner Cantamessa brought up the success of the alluvium sorting project. He suggested that materials could be sorted which are not significantly contaminated for use as structural fill in areas that would benefit the community and free up repository space. Mr. Harwood acknowledged that there was a successful CWA sorting project that reduced the need for repository space and that this may be good to consider.

Regarding recreational use areas, Mr. Harwood reported that the Recreation PFT (Project Focus Team) was combined with the Lower Basin PFT this past year with the understanding that there are recreation opportunities in the Lower Basin as well as the Upper Basin. However, there are still problems with people recreating in contaminated areas. There may be opportunities to clean up some of these recreational use sites if funding can be found.

Commissioner Toni Hardesty (State of Idaho) asked how it has worked moving the PFT recreation focus into the Lower Basin, and whether it's getting the attention it needed? Mr. Harwood replied that he and Ms. Stevens have been making sure the focus is not lost. Ms.

Stevens said that one of the reasons was a change of staff as Mr. Mark Masarik (EPA) retired, and he was the Chair of the Recreation PFT. She indicated that the PFT is open for ideas for cleaning up recreational sites such as Gene Day Pond, etc.

For remedy protection, Commissioner Cernera inquired whether anything precludes us from moving forward with identifying work to do under this category, and if we need to wait for the ROD Amendment? Mr. Harwood answered that they have been working with Ms. Anne McCauley (EPA) on this issue numerous times, so there is already a list of remedy protection items they could do as soon as they got the go ahead. Commissioner Cernera asked for clarification if the ROD Amendment needs to be finalized before they can move on any of this work. Mr. Harwood said that if it's listed in the ROD Amendment itself, he would say yes.

Ms. Cami Grandinetti (EPA) clarified that the issue is the Basin Commission recommends work that has been selected in the decision documents, but the remedy protection work has not yet been selected in the decision document. Commissioner Cernera asked EPA if they were suggesting that the ROD for OU-3 does not allow us to do any remedy protection. Ms. Grandinetti replied that the work defined in the existing 2002 ROD describes work (i.e. infrastructure work) to protect remedies, but that it does not have the specific projects identified; the ROD Amendment will clarify it, so EPA will need this to proceed with work.

Commissioner Cernera pointed out that the OU-3 ROD contemplates work in the Lower Basin, but doesn't specifically identify things. He asked if we now have to wait for the Amendment to specifically identify things in the Lower Basin before we can act on them. Ms. Grandinetti responded that some of the work identified in the 2002 ROD was done on an agricultural wetland conversion. It did not call out specifically the Schlepp property, but it was agricultural to wetland conversions that were identified. We already have those, we can do that. But right now, there is not enough specificity, so we have to have some sort of a decision document defining other actions in the Lower Basin or remedy protection projects.

Commissioner Cernera said to Ms. Grandinetti that this raises a red flag. For example, doesn't the OU-3 ROD contemplate 10% of floodplain work in the Lower Basin with some sort of remedy? It's vague, but it provides some sort of platform which we can move forward with things. He does not want to get to a point in a year and a half from now when he wants to suggest doing some Lower Basin work which EPA has suggested we can do under the current ROD, but not be able to.

Commissioner Cantamessa commented that the EPA also raises a red flag for him. If they have to refer to specific projects in the ROD Amendment and if the Amendment is for 90 years; then he feels that they are going to have all kinds of problems getting projects done if they are not specifically identified. He does not want to debate this now, but he thinks that Ms. Grandinetti brought up another concern.

Ms. Grandinetti responded that she does not want to overstate this, but right now there are phrases that allude to remedy protection in the 2002 ROD for example. It is infrastructure work to protect the remedy. There is not a lot that you can do without more definition, and that

definition needs to be developed and be in the decision document. Commissioner Cantamessa said that she has not appeased him at all.

Commissioner Hardesty said that she is concerned as well. She thinks that the question everyone is struggling with now is; where is that line? They are being asked to comment on the proposed ROD Amendment, so in light of those comments, how far do they have to push to have specific language in the ROD Amendment so they don't end up in this scenario? She suggested talking about remedy protection, because again there is some vague language in there, but what they are hearing now is that it's not specific enough. She inquired about the types of remedy protection projects that EPA does feel are covered in the language now and a few examples to help her understand how specific they have to be.

Ms. Grandinetti said that she feels the need to consult EPA's legal counsel, but wanted to respond that when the language was put in, it was because there was a concern that they would want to be able to protect the remedy. However, nobody knew what that was going to look like at the time they wrote the 2002 ROD. She added that it depends on what the language is and whether you think you have really given an equal opportunity for people to comment on it. They may need another decision document to let the public weigh in and that's where they are now.

Commissioner Cantamessa indicated that he's not going to drag it into the one-year plan because then they are into a three hour debate on this. Mr. Harwood said that he agrees with Commissioner Cantamessa on the same concerns because if every single site in the Basin has to have a specific action plan in the ROD Amendment - what if you miss one? He noted that EPA has called another Upper Basin PFT meeting on December 7 to talk about the project list and the work that's listed in the Amendment. He encouraged folks to come because they are going to have to do deal with some of these issues. He also remarked that you have to be careful as Ms. Grandinetti said to allow someone who is going to be affected by the action to have a say in it.

Commissioner McLerran said that he wanted to comment on the issue of specificity. He thinks that EPA needs to make sure they get some clarity to folks. It's hard for him to believe that there's not some flexibility to be able to identify some projects that can be done within the framework of the language. He thinks that the key is making sure that we agree on what those are and making sure that we are all on the same page with respect of the work that we're doing. So he thinks there will be some flexibility, but EPA will go back and clarify this and get back to the Commission. Commissioner Cantamessa thanked him.

Regarding environmental cleanup, flood control and infrastructure revitalization, Mr. Harwood said that he did a very thorough infrastructure revitalization plan for the Upper Basin, but the big issue is how you get the funding for it. He noted that they used a lot of information from the Drainage Control Infrastructure Revitalization Plan (DCIRP) to develop the remedy protection portion of the ROD Amendment that is currently under consideration. For major flood control needs, Mr. Harwood is working with U.S. Senator Mike Crapo's office. They sent a project request to the Senate Environment and Public Works Committee for Upper Basin flood control issues pertaining to hydraulics, levees, etc. This project also dovetails with the remedy that EPA

has proposed in the South Fork and Pine Creek, so we're all working together on this issue. He does not know the status of this right now or what Congress can do.

Mr. Harwood has also been working with the Silver Jackets who deal with flooding issues, state officials, the Corps of Engineers (COE), FEMA, Dept. of Water Resources, etc. On August 19, the day after the BEIPC meeting, he arranged a field tour of the levees. He will continue to work with the Upper Basin PFT, Homeland Security, and Idaho State Senator Joyce Broadsword on this issue.

Commissioner McLerran expressed to Mr. Harwood that he thinks that piece of work is extremely important. He appreciates the work that Mr. Harwood is doing as it's a very important issue for people. EPA knows that they cannot do all of that work with respect to the ROD Amendment. They should do some of it where there is a connection to remedy protection and there is a clear connection that can be made. He's glad that Mr. Harwood is working on it.

Commissioner Cernera commented on the LMP activities section, and suggested that Mr. Harwood explain some of the activities in more detail such as the nutrient inventory, public outreach component, shoreline erosion inventory, etc. He also asked if information could be added about the Natural Resource Damage Restoration activities and the work of the Trustees. Mr. Harwood will incorporate this language after he receives it later.

4) Public Comment: A question was raised about the official name of the Asarco Trust. Mr. Kenny Hicks answered that it's called the Successor Coeur d'Alene Custodial and Work Trust (SCCWT). Then he commented on the discussion of remedy protection and where that ends up in the ROD Amendment. He would like to ask again that we look at remedy protection for 100-year flooding. He indicated that it's especially important as the DCIRP has been gauged on 100-year data.

Commissioner Cantamessa pointed out that he was looking at the 1992 ROD last week. It refers to 100-year flood protection, so it's something that has been recognized before.

5) Approval of 2011 BEIPC One-Year Work Plan: Commissioner Jack Buell (Benewah County) made a motion to adopt the revised 2011 BEIPC one-year work plan with the understanding that some language will need to be added later in three areas for Sections 2.1, 2.2, and 2.4. The motion was seconded by Commissioner Currie, and unanimously approved.

Break

6) Presentation of Final Draft 2011-2015 Five-Year Work Plan: Mr. Harwood presented the BEIPC five-year work plan and mentioned that it's divided into the same categories and sections as the one-year plan. For Upper Basin Remedies, he indicated that the ROD Amendment will provide a comprehensive list of work and then a separate implementation plan. For the Lower Basin, there are still data gaps that need to be filled and work that needs to be done, but every time we do something, high water with contaminated sediment covers it up again.

Commissioner Cernera said that he agrees with Mr. Harwood's comments about the Lower Basin, but is concerned that there may be no actual work done on the ground for the next five years. He thinks there may be some things that could be done such as demonstration projects to help evaluate the recontamination issue. He urged adding some language about implementing projects that may be appropriate.

Commissioner McLerran said that he would be supportive of including some language that would indicate what projects we can do as appropriate or as approved in the one-year work plan and then identify specifics.

Upon further review, the BEIPC discussed revisions to some of the proposed language in other sections and mutually agreed that additional information for specific sections in the five-year work plan could be provided later.

7) Public Comment on Five-Year Plan: Mr. Bill Rust (Shoshone County TLG rep.) said that he has been participating in the Lower Basin PFT. He assumes that EPA is done revising the ECSM (Enhanced Conceptual Site Model) and now they are doing additional monitoring to collect more information. He assumes that the next step would be a focused feasibility study, then a proposed plan, and then a ROD Amendment for the Lower Basin. He asked if EPA would be prepared to come up with some kind of language for what may happen in the next five years.

Ms. Grandinetti said that EPA is gathering more data. For those that remember the initial RI/FS (Remedial Investigation/Feasibility Study) conducted in the late 90's that culminated in the 2002 ROD, there were a number of actions in the Lower Basin remedies that were not selected in the interim ROD. The interim ROD was clear that there would need to be additional work. She indicated that Mr. Rust was correct. The Lower Basin group is working on a focused feasibility study, and there will be another decision document that she hopes will happen in the next five years. She indicated that it's funding and weather dependent because they need to have the right weather to understand the River better.

8) Approval of 2011-2015 BEIPC Five-Year Work Plan: Before asking for a motion to approve the work plan as discussed, Commissioner Cantamessa reminded everyone that the plan could be amended in the future, if needed. Commissioner Hardesty made a motion to approve the revised five-year plan. The motion was seconded by Commissioner McLerran.

Discussion: Commissioner Grant Pfeifer (State of Washington) wanted to clarify as discussed today that we should make note of all the technical changes, and also more importantly, the opportunity to implement projects, demonstrations, and evaluations as appropriate and as approved by the one-year plans, especially in the Lower Basin section of the table. Mr. Harwood specified the Lower Basin sections of the table were 2.4, 2.2, and 2.4.

There being no further discussion, Commissioner Cantamessa called for the question. The motion passed unanimously.

9) Successor Coeur d'Alene Custodial and Work Trust (SCCWT) Update: The Trustee, Mr. Dan Silver, thanked the Commissioners for the opportunity to provide an update. He announced that he made his first permanent hire, Mr. Dan Meyer, a lifelong resident of the Basin who has worked extensively in mining and the private sector. He also recently worked for IDEQ, and is still currently an employee. In the first of the year, Mr. Meyer's first task will be to set up an office in the Silver Valley. Mr. Silver is not sure when he will make the second hire as work cannot start until the ROD Amendment is issued. He also gave a brief financial update about the money in the Trust, the process for investments and asset management, the potential of risk, and how he plans to proceed.

Commissioner Cantamessa expressed the Basin Commission's appreciation to Mr. Silver for coming to the meeting to provide an update. They are pleased with his selection of Dan Meyer as they know he will do a good job. Commissioner Hardesty added that they were sad to see Dan leave, but agreed he was an excellent choice.

10) South Fork CDA River and Pine Creek Flood Control Issues Update: Mr. Harwood noted that the BEIPC already talked at length about the efforts of getting funding for flooding issues during the discussion of the work plans. He then gave an update about the status of the efforts since the last BEIPC meeting. In August, there was a tour of the South Fork CDA River and Pine Creek drainages. He thinks that it helped to open a lot of people's eyes about the issues. He has also met with State Senator Broadsword, COE, FEMA, Homeland Security, etc. numerous times. At a meeting on October 26, it was decided that they needed to have a higher level of involvement by agency heads to establish that this is a priority for their agency and that they will work with the BEIPC or whomever on these issues. Governor Otter will send a letter to EPA Region 10 and other federal agencies to ask if the agency heads will meet with Idaho State agency heads to discuss this flood issue because it's become apparent that EPA needs to be a partner in this process with the Silver Jackets. If EPA is going to be taking remedy actions in the drainages, then we need to be coordinating with them for all of the other things that need to be dealt with as well. He appreciates that Governor Otter is going to send a letter, and would also like to thank State Senator Broadsword and U.S. Senator Crapo's office for their assistance.

Commissioner McLerran reiterated that this is important work and he wanted to emphasize that the amount that EPA can do on this needs to be worked out as part of the ROD Amendment. He thinks that it's important it gets done. This is bigger than what EPA can do alone and they need those other federal agencies to stay involved. What EPA can do needs to be spelled out and needs to be clear. They are committed to what can be done legitimately with the cleanup funds.

Mr. Harwood brought up that if EPA starts doing a remedy in the River, then it's going to have other effects. The best way to make sure the remedy for the River works with the rest of the hydraulic system is to have partnerships. He stated that this has to be done.

11) Public Comment: Idaho State Representative Bob Nonini (District 5) said that he prepared comments, but after attending a meeting last night in Wallace with Regional Administrator McLerran, the local mayors, and Shoshone County commissioners, he's not sure if his comments are valid points. To preface that statement, the reason he's wondering if they are valid points is

that they talked about a 10-year plan in Wallace, and EPA seems to be under the decision that it will not be possible. EPA wants to do something longer. However, he will go through his points and make them for the record. As many people know, he has firsthand knowledge of EPA's involvement in the Silver Valley, and the long term involvement to the present. The 2002 ROD was the final remedy to address human health issues in the Valley. He feels that there are no human health risks today as this work is largely complete. He believes that the Amendment to the 2002 ROD is less than \$3 million of the \$1.3 billion dollars that is going to be allocated to human health. He thinks that EPA agrees that human health issues have been pretty much remediated and almost null. Since there are no human health issues to address, the new massive expansion plan must be about something else. EPA said last night that it's about other issues than human health; it's about the environment, fish and wildlife, and those issues. EPA's price tag to protect fish and water is \$1.3 billion which is unreasonable to begin with, but he would like to make these next points.

They believe the cost could be much higher. EPA's \$1.3 billion cost estimate ignores construction cost increases over time and is based on a 7% discount rate which is unrealistic. Using more accurate construction costs and a realistic discount rate of 2.25%, the real costs are as follows: Plan cost of 65 years to implement would be closer to \$3.4 billion. For a plan that went up to 90 years to implement, the cost would be closer to \$5.5 billion. Not accounting for cost increases and using an unrealistic discount rate, EPA's \$1.3 billion cost would be off by as much as 200%. They believe there is a better way, and with this next point he feels that they may be beating their heads against the wall because he does not think EPA is really listening. EPA should pull back this massive plan in favor of a more reasonable 10-year approach that will meet cleanup goals more effectively, efficiently, and in small enough pieces, so that the local people could remain involved in the future of the Valley in a meaningful way. They had quite a discussion last night about that 10-year plan, and EPA's position on the 10-year plan. He's not going to belabor that.

He said EPA mentioned that they had been in contact with Hecla and had seen their 10-year plan and the 10-year plan that the mayors presented and the County commissioners have been involved in. What he sees and hears this morning, the best word he can use to describe it, is just "crazy" sounding for some of the work that EPA wants to do over the next few years, decades, and multiple generations. They also talked about the water issue and diversion last night and he asked EPA if the State has anything to say about this. He understands the water quality issue is EPA's, but they believe the water quantity issue is the State's. They are hoping that they will have some say in it and not just a seal of approval, so to speak, whether they get it or not.

Regarding EPA's comment that the Governor does not have a veto in this, he does not want to speak for the Governor as his staff is here. However, he suggested that if he was governor, he would take that comment almost offensively. He feels that the Governor is the CEO of this State. This is our quandary - EPA has come in, and he knows that under some federal laws EPA is allowed to do these things under CERCLA, Clean Water, etc., but he wishes that they would have more time (i.e. for public comment) as the State Legislature will not convene until January 11, 2011. They will not have a chance to collectively discuss this issue or visit with the Governor and his staff. So he goes back to something he said a few months ago about the

extension. He thinks that the deadline of November 23 is too short. It's probably too late now, but he wanted to at least voice his frustration.

He could go on and promote the 10-year plan, but he heard last night from EPA that it's probably not on the table. EPA is going to move forward, so at this point he will stop. He appreciates the opportunity to speak to the BEIPC and the work of the Basin Commissioners. He does appreciate Commissioner McLerran for listening. So he wants him to hear it from a boy who grew up in Wallace, Idaho and what he also heard from the mayors last night. This is their future in the Silver Valley, the mining industry is strong; and if EPA is going to move forward with this, they need to be able to work with us and allow us to put some input in, more than just lip service, really take seriously what we think the plan should look like and allow us to put those comments more into accord with our plans.

Idaho State Representative Frank Henderson (District 5): For the record, he indicated that he is currently in his third term as a State Representative, and will soon be starting his fourth. He would like to review some of the things that have happened in the 25 years he's been involved in public office. As a former mayor and county commissioner, he led the project to install two modern wastewater treatment systems in this county, one in Post Falls and one at the airport. As county commissioner, he was the leader of establishing a solid waste disposal system. Also as mayor, he upgraded a municipal water system. As a legislator along with Rep. Nonini, they have done several things that address the protection of the environment or remedial programs. One of those is the aquifer protection legislation now in place. They also passed the lake management plan. As a legislator on the Joint Finance and Appropriations Committee (JFAC), he carried and recommended the appropriation of funding for the North Idaho water adjudication program. Before he comments further, he wants to say that he supports the comments made by Rep. Nonini. To be brief, he will remind this board that the legislators from the 5th Legislative District wrote a letter to EPA dated August 9. They sustain all of the comments they made for EPA's review.

Rep. Henderson said that as a person who has worked with the EPA for over 25 years in public office, he can tell you from his experience that sometimes it can be really troubling. There are several issues on this program that they are discussing today that do trouble him. But one of the issues is the proposal to establish a program that reaches out for 50 to 90 years with certain specifics. He brought up the issue of technology and commented that to do a program for 50 years and ignore how fast technology is advancing is an error. He was encouraged when he first heard today about a 10-year or 5-year program that is more realistic. That way, they can have a plan that opens the door to embrace new technologies that are available to help them achieve the goal that they all want to get. So there's no way he can support a 50-year plan. 10 or 5 years maybe with annual goals specifically defined, so that as time goes by they can see how they have improved moving forward.

Overall for the program in the Basin, he wants to say that in the letter they submitted on August 9, they emphasized that the remedial programs that were put in place with the existing ROD are the ones that they believe must be completed; and then whatever actions are needed to protect

them. Whether it's flood control or whatever, that is what should have the immediate emphasis in any expansion of the program.

He wants to comment further on issues that he faces as a legislator. He has been on the appropriations committee for five years and he can say that the next few years are really going to be difficult on appropriations. The appropriations committee met yesterday in Boise and they know as a result of that meeting, they start the year with about a \$450 million deficit. They will have to find this funding somehow. So to embrace a program that is going to expand the State's financial liabilities is going to be very difficult.

He and Rep. Nonini have also been heavily involved in water issues. They believe that water, entitled water, is a state issue and state's right. They are not about to give this away without the proper legal determination of who has the right. In the proposed plan, there is a diversion of surface water and he does not believe that the Idaho Dept. of Water Resources has reviewed this or approved it. Maybe they have, but he has not heard about it. And so, those are among issues that he believes are state's rights in which the CEO of this State, the Governor, has the final word. He would assume that beginning in January, the environmental group will go to work on this question and the appropriations group will be considering the difficulties before us. Rep. Henderson would suggest to EPA that the timeline of 50 or 90 years is too long. A shortened period would be more appropriate with specific goals identified. He wants to emphasize that decisions made by the State legislators need concurrence to move forward. The legislators are usually in session during January, February and March, and from what he has heard today, there are a lot of incomplete studies here. Maybe we should get the Corps of Engineers to work on this. He does not know how you can bring specifics before the Legislature beginning in January, eight weeks from now, with all the work that needs to be done. He asked EPA to provide a specific proposal upon which they can make decisions to fund or not fund. He indicated that he is willing to answer any questions and thanked the Commission.

Idaho State Representative Marge Chadderdon (District 4): Said that her comments will be very brief. Although she does not have a scientific or environmental background, she appreciates all the work that has been done on this project. She knows that there has been constant work going on in the Silver Valley and she appreciates it. As a state legislator (i.e. citizen legislator), her responsibility is to the citizens of Idaho. The legislators meet for three months and when the legislative session ends, they return home to the close ties of their communities and listen to the concerns of those who elected them. During her tenure as a legislator, she has followed the EPA's work in the Silver Valley. She recently attended one of the open hearings on the proposed 50 to 90 year expansion of the EPA's work in the Basin. This expansion has been met with much opposition and questions as to the best way to accomplish the EPA's mission. As legislators, they are responsible for translating the public will into public policy for the State. There are many opinions and plans on the cleanup in the Silver Valley and about how it should continue. She suggests that they should all work together on alternative plans that are a wise and productive use for all of our resources and leave the Silver Valley a greater community for citizens to live, work, and play for years to come.

As a legislator, she stated that the first time she looked at legislation that had her name attached to it and how your vote goes into the annals of history it was quite shocking to her to realize that her name will be attached to the legislation for eons of time in the history of Idaho. She knows that any of the work that they are going to proceed with will have their names attached to it too. She suggested that they be very cautious on how they proceed, so that they can make the best choices for all the citizens.

Idaho State Senator John Goedde (District 4): Thanked the Commission for the opportunity to address them. He noted that most of what he was going to say has already been said. He testified at the hearing in the Silver Valley as an excerpt to Senate Concurrent Resolution 127 which was a document that was adopted in the 2010 Idaho legislative session. He urged people to read it, and said that it's not very supportive of what is going on in the Silver Valley for what is being proposed. He also applauded the Governor for sending forward his letter and thinks the Governor very well expressed some concerns that we have here. He looks at some of the federal government programs and how cost overruns have doubled or tripled costs of what was anticipated on weigh in and those were maybe 10, 15, or 20 year plans. He does not understand how any forecasting tools can accurately generate costs for a 50 or 90 year plan. He would suggest that the 10-year plan would be more manageable and better budgeted.

Sen. Goedde brought up the original ROD and the focus on human health hazards. EPA has done great work in reducing blood lead levels, and now the focus has been moved to zinc. As far as he can understand, zinc has no threat to human health, but diverting water from the watersheds and then piping it to a central treatment plant is going to disturb streambeds, fish, and the recreational opportunities that are now enjoyed by the citizens of Idaho and other states. He thinks that there is a very real concern about the state's rights issue over EPA's authority of capturing that water. In addition, it appears to him that EPA has ignored some of the very good recommendations of the National Academy of Sciences (NAS) and he would urge EPA to revisit that.

He said that Rep. Henderson talked about the fiscal impact for the State of Idaho which is suffering from a loss of revenue. Sen. Goedde understands that it is our responsibility to continue the operation and maintenance of the water treatment plant, and the State's percentage for any additional expenditure is a huge concern. In regards to the Idaho State Legislature convening in another month or so, he would suggest that this has a huge impact to the State, and that EPA allow the Legislature to weigh in.

Commissioner Cantamessa thanked the legislators for their comments. He appreciates them taking the time today to come and participate in this public comment period.

12) Executive Session: Commissioner Cantamessa called for a motion to move into executive session during lunch for the purpose of discussing personnel issues under Idaho Code 67-2345. Commissioner Buell made the motion which was seconded by Commissioner Currie, and unanimously approved.

Lunch

Commissioner Cantamessa called for a motion to move out of executive session and back into regular session. Commissioner Cernera made the motion and it was seconded by Commissioner Buell. The motion was unanimously approved.

13) Introductions: Commissioner Currie introduced Mr. Dan Green who was elected as a new Kootenai County Commissioner and will be taking office in January 2011.

14) Special Announcement: Commissioner Cantamessa said that this will be Commissioner Currie's last Basin Commission meeting. He acknowledged him for serving on the BEIPC for five years and for being an integral member with the Counties. They are sorry to see him leaving. He expressed appreciation and thanks for the work that Commissioner Currie has done on the Basin Commission, and then presented him with a plaque.

15) Public Comment: Commissioner Cernera said that he was sorry that the legislators had to leave and were unable to hear what he wanted to say about some of the public comments put forth. First, he noted that the legislators specifically talked about a 10-year plan, and he finds the notion of backing a 10-year plan somewhat curious. To some extent, it's been a sort of a phantom thing that has come about to his knowledge in the last three weeks. He remembers when EPA came out with their draft proposal and the angst that was raised by the County Commissioners concerning the duration of the review time period which was about 45 or 60 days. A lot of people wanted to review that plan for six or more months, so it's surprising to him that a plan comes out three weeks ago that probably some people don't even know what this plan is, but they seem to be backing it whole-heartedly in a period of three weeks.

Second, as a Basin Commission member he looks at our process and commented that a plan like this comes around three weeks ago. It was brought to the CDA Tribe and presented by Mr. Phil Baker, the President of Hecla. At that point, they were asked to back a 10-year game plan. Commissioner Cernera noted that the Basin Commission is set up to have a Technical Leadership Group (TLG) and Citizens Coordinating Council (CCC) for vetting things. He suggested to Hecla that if maybe such a plan had been brought forth a year ago as the TLG was working through their process; then maybe it would have been vetted technically and some of the things that were in that plan may have been included in some sort of the proposed plan by EPA. So he believes that it's a little disingenuous that we are approached by political representatives now suggesting that we back something that most of us have not seen. None of it has been vetted through the BEIPC process; and quite frankly, usurps our process. If Rep. Nonini was still here, he would say this to him, "I'll be the jerk, you can look at me and yell at me because it rubs him the wrong way. He thinks that the 10-year plan has been used as a political tool, and that it's being used right now to try and limit Hecla's liability on a responsibility they have to clean up the Basin." He requested that he wants this on the record.

Commissioner Cantamessa asked if anyone else wanted to make public comment. Hearing none, he said that he wanted to make a few general comments before moving onto the next agenda item regarding the ROD Amendment update. His comments pertain to where we are in the ROD Amendment proposed plan and where we are as the Basin Commission. As he mentioned this

morning, he thinks that it's an important time in our evolution. The BEIPC was formed in 2002, about the time that the last ROD was enacted, and has grown over the years. It has primarily done CWA projects, but they have also accomplished some important things. Not only is this a time of ROD Amendment, but there is the Asarco money that is a new dynamic in this cleanup. They are switching from a primary focus on human health to the environment which is evolutionary. He would like to see the Commission move forward, and wants to hear what the Commissioners have to say about the role they might play as far as the Basin Commission is concerned. He would like to see the BEIPC establish tighter relationships and partnerships to be able to be the kind of leader in this process that it was designed to be originally. He thinks that they are at the point where hopefully they can accomplish that. So as they listen to these comments on the ROD Amendment and go forward in their duties, he thinks it's time that they look at the whole process and that they can really make some gains if they want to.

16) Upper Basin ROD Amendment Update: Ms. Anne Dailey (EPA) provided an update on the status of the ROD Amendment. The public comment period for the proposed plan opened on July 12, and EPA received a number of requests for an extension. They granted those extensions and the comment period was extended 90 days for a 135-day comment period. During that time, there were a number of public sessions (i.e. workshops, open houses, public tour, etc.) in the Upper Basin. There were also a number of presentations made at various community meetings such as the Rotary Club. The public comment period will close November 23, 2010.

Ms. Dailey reported that EPA has received hundreds of comments and that it's great to see the community engaged. It will take time for EPA to carefully consider and respond to the comments. In general, comments received against the ROD Amendment were about the proposed plan being too big, too long, too expensive, and that people don't like it. She indicated that all of the comments will be entered into an electronic database that will allow EPA to track them, so they become part of the Administrative Record. She noted that every comment will get a response as EPA will prepare a Response to Comments for individual comment as well as summary responses to common issues. EPA wants to consider each comment carefully and ensure that they are building the right plan with the science and available technology to the letter of the law in order to get as good as possible cleanup plan. The response to comments document will be available to people at the same time that EPA issues the final cleanup plan for the ROD Amendment. The information will also be posted to EPA's webpage.

She reiterated that they are taking the comments seriously. EPA has already started looking at some things that may be possible or appropriate to change in the cleanup plan. They have been working with the Upper Basin PFT all the way through this process to put together the ROD Amendment and come up with the mine and mill sites that they will be addressing. The next Upper Basin PFT meeting will be December 7 in Kellogg to discuss the list of mine and mill sites. So EPA is taking the concerns seriously, seeing if there are some sites that may be removed before the ROD Amendment is issued. There may be some sites where cleanup is not needed, but they wanted to include everything, so that they do not have to do another ROD Amendment later. It was better to move forward, rather than adding in sites later. Ms. Dailey noted that EPA has been very clear and transparent about this process all along. They have also

been working on the adaptive management plan and implementation plan as they all dovetail together. EPA hopes to issue the ROD Amendment in mid-2011, so that work may be started.

Ms. Cami Grandinetti (EPA) commented on the following: 1) Five-Year Review Update - EPA has completed their third five-year review for the site and the document will be coming out this week. They will make a presentation at the February BEIPC meeting, and it will also be published on EPA's website. 2) Community Outreach - EPA will be advertising very soon for a Community Outreach position in the Silver Valley for a commitment they made last fall. In the last year, they have also provided funding for IDEQ for their outreach position. The new position will be based in the Kellogg area and they are hoping to coordinate it with IDEQ in the Kellogg office. The position will be open to the public, but there are certain criteria and qualifications. They are going to go through the EPA's Senior Environmental (SEE) program which provides employment opportunities for people 55 years of age or older. The person they hire will work closely with IDEQ's outreach coordinator.

Commissioner Cerner said that he had a question related to the five-year review process. The Lake has been deferred from EPA decisions as far as remedial actions. Does EPA look at that decision in the five-year process? If not, what would EPA propose to do as far as evaluating the effectiveness of the LMP? Ms. Grandinetti responded that regarding the LMP, she has to admit that she has not read that far through, she's not sure of what the review of that is for the five-year review. The hard part is that the review is for actions that have been implemented. And so, EPA will have to take a look at that as it's very different. She does think the effectiveness of the LMP should be reviewed.

17) Communications PFT Update: Ms. Jeri DeLange (BEIPC) provided an update on the Communications PFT. In August, members of the PFT and Citizens Coordinating Council (CCC) worked on public outreach at the North Idaho Fair. The PFT recently produced a FAQ sheet on public commenting that is posted on the BEIPC website. In addition, a mini-workshop on public commenting was facilitated by Ms. Vera Williams (CCC Vice-Chair) at the last CCC meeting on October 27.

18) North Idaho Fair Booth: Ms. Denna Grangaard (IDEQ) gave an update on the joint efforts for public education and outreach at the North Idaho Fair. The fair booth was located in the education building and was very successful. Participants included the CCC, Communications PFT, Panhandle Stormwater Education and Erosion Program (SEEP), CDA Tribe and IDEQ LMP, CDA and Kellogg IDEQ. Topics included the yard cleanup, aquifer protection, LMP, etc. The theme of the outreach booth was "Working together for your Environment."

19) Repository Update: Mr. Ed Moreen (EPA) wanted to remind everyone that the process started years ago in the search of potential sites for repositories. They will continue to build on this process and look for new sites. There have been many opportunities for public involvement. The two sites that were selected as potential repositories are the Osburn and Star tailings impoundments.

Mr. Andy Mork (IDEQ) then made a presentation on repositories which included updates on the following: 1) Osburn and Star site investigation overview; 2) Big Creek repository north end expansion update; and 3) alluvial materials handling in the upcoming remedial action. He pointed out that the proposed ROD Amendment has as part of the remedial action, excavation of over a million cubic yards of alluvium identified for removal. There are three possible options for handling it: 1) Haul and dispose at a repository; 2) Haul and screen away the course and fines at a repository; and 3) Screen course materials at excavation site and haul fines to a repository or hold in storage on site. He stated that preservation of repository space will be a priority.

20) Lake Management Plan Update: Ms. Rebecca Stevens (CDA Tribe) said that she and Mr. Glen Rothrock (IDEQ) worked on revising some of the language for the BEIPC work plan during the lunch break for the Commissioner's review and approval. The updated language includes: 1) The Tribe and IDEQ selected six sites for water quality monitoring and will continue sampling throughout 2011. This is part of their nutrient resource inventory on the St. Maries and St. Joe watershed. (The Tribe has 3 sites and the State has 3 sites). She noted that the same language will be in the five-year work plan. 2) They will continue joint water quality monitoring in CDA Lake for metals, nutrients, physical parameters and biological communities. Throughout the next year, the Tribe and IDEQ will continue to learn and utilize the ELCOM-CAEDYM and LOADEST models. These models use real time data that is being collected in the Lake. The State and Tribe also installed and will be using data from the weather stations. 3) The draft 2009 monitoring report will be presented to the TLG and BEIPC for review before it is finalized. Ms. Stevens also updated everyone on the CDA Basin watershed advisory group, TMDL efforts, participation in public outreach events such as the North Idaho Fair, needs assessment report, inventory of eroding riverbanks on the St. Joe and St. Maries watersheds, etc.

After review and discussion of the proposed language, a motion was made by Commissioner Pfeifer to approve the additional language for the one and five-year work plans. It was seconded by Commissioner McLerran, and approved unanimously.

21) Lower Basin Issues Update: Mr. Ed Moreen (EPA) provided an update on the status of the Lower Basin which is the area of the confluence of the South Fork and North Fork at Enaville to the mouth of the CDA River at Harrison. This included a presentation on the development of a multi-dimensional model or DTM (Digital Terrain Model) to help study sediment transport. The ECSM (Enhanced Conceptual Site Model) report was issued in August and distributed at the BEIPC meeting. Copies are available on CD for anyone interested. Mr. Moreen said that there are two major processes in the Lower Basin they are looking at: source control and habitat remediation. One of the necessary components of the work they are doing is being able to model those actions, so that they can better understand the actions, and to also monitor for future situation modeling. He indicated that all of the models are not comprehensive models and that they are pieced together in different ways. There is a lot of data to be collected to help identify different remedies for the Lower Basin.

Commissioner Cantamessa commented that he would like to see more detailed information in the future than in the past. He believes that part of the struggle with the ROD Amendment and understanding all of it was that they got a lot of "fluff." He feels that they were advised, but not

very thoroughly. Mr. Moreen answered that it's always a challenge about how much information they should provide to the BEIPC. The PFT (Project Focus Team) level is where they usually share the technical information. He indicated that they need to figure out how the different groups interact. They want to provide the BEIPC as much information as they want. Commissioner Cantamessa said that he is primarily interested in decision-making information and getting it from EPA's perspective and how that may affect the Basin Commission.

Commissioner Hardesty suggested that it would be helpful to understand certain decision points for certain data that is collected before a path is already picked. This would allow the Basin Commissioners to have an opportunity to weigh in sooner or ask questions before the critical decisions are made. Commissioner McLerran proposed that it may be particularly helpful to the BEIPC for Mr. Moreen to explain in the future how the models are being used to evaluate alternative actions and how it would drive the selection upon review and discussion by the technical advisory groups.

22) Agricultural Land to Wetland Conversion: Ms. Anne Dailey (EPA) and Mr. Brian Spears (USFWS) made a presentation on the Schlepp wetland project. Ms. Dailey also acknowledged Ms. Stevens for her work on the project. The goal was to set up clean waterfowl feeding areas in the Lower Basin due to the high mortality of waterfowl in past decades. She displayed slides of the work that has been done, and Mr. Spears followed with the progress of the restoration efforts which began in early 2008. He also provided information on the data that they have been collecting for a biological waterfowl survey throughout the Basin.

23) Citizens Coordinating Council (CCC) Presentation: Mr. Jerry Boyd (CCC Chair) said that the CCC had a meeting in July and a summary was provided in the BEIPC board packets. He mentioned that an issue was raised by Mr. Kenny Hicks concerning destruction of survey markers by some of the work that is being done as part of the remediation. The turnout for the CCC meeting was modest and he feels that if more of the public attended, they would have an opportunity to learn a lot. In addition, citizen comments are reported to the BEIPC. He also wanted to bring up the same point he's made before, that some people have the idea that public comments like on the ROD Amendment are not effective. For example, there was a CCC meeting about 3 or 4 years ago that had a huge amount of people attending and public comments helped changed the design of the EMF (East Mission Flats) repository. He feels that it's helpful for the agencies to know what the public has to say about the work being done, so it's really important to make public comments.

Mr. Boyd said that the CCC Vice-Chair, Ms. Vera Williams, facilitated a mini-workshop for the CCC about making public comments. A FAQ sheet produced by the Communications PFT and CCC was also included in the board packets. He indicated that there is not much time remaining to comment on the ROD Amendment as the deadline is November 23. He asked for clarification if November 23 is the date of receipt, or the date of mailing. EPA clarified that the deadline for mailing is November 23. Mr. Boyd also noted that the CCC was involved in the repository site selection criteria process. Ms. Williams then commented on a new group in the Lower Basin that is forming to help expand the role of the CCC and to provide information for the citizens to educate themselves before decisions are made.

Commissioner Cantamessa said that Mr. Boyd's example of EMF and public comment was an excellent example of public comment and how it works. That issue was very contentious; it's still contentious as some people are still concerned about it. He would suggest that the public as a whole has accepted it, and that's how the process works.

24) Public Comment: Mr. Bill Rust (Shoshone County TLG rep.) commented that the flood issue is a big issue in the Silver Valley. He has reviewed the proposed plan in detail and there is \$125 million of riparian enhancements to do work in the stream channels. He said that somebody previously mentioned that the whole ROD is an ecological cleanup and that the underlying objective is to re-establish a fishery in the South Fork. He also heard talk today about the floodway issues and that EPA has stepped back from that. There's talk about having the Corps of Engineers (COE) do a hydraulic model, etc. He thinks that EPA should think very hard about that. In addition to being a floodway, it also has to be fishery habitat and if you turn it over to the COE and ask them to fund it, you will end up with a rip rapped ditch. It has to have plants and a lot of other things for fish, so that design has to have the EPA, COE, USFWS and a lot of other people creating that design. It's not going to be easy as it's not standard operating procedure for any of them. He would very much encourage EPA to take the lead because he thinks it's going to be very important to achieve in this goal.

Commissioner Cantamessa said in regards to this subject, he wanted to reiterate his earlier comments about enhancing the BEIPC's role and ability to be able to bring these things together. One thing that people forget about the Basin Commission is that Commissioner McLerran represents the federal government, and not the EPA. He's appointed by the President as the federal representative and that includes the COE, FEMA, and the rest of those agencies. So, he thinks it gives the BEIPC the ability to pull input from all of those agencies into this process.

Commissioner McLerran said that he did not want to give the impression that they are pulling away. What he was trying to convey is that they need those other agencies as part of the effort because it needs to be a coordinated and concerted effort from more than just EPA.

Mr. Brett Bowers (CDA Lakeshore Property Owners Association) brought up on page 5 of the previous BEIPC meeting minutes that Commissioner McLerran made a statement that we want to work together in partnership on this, but if we can't get there, we want to say to the Valley that we're going to move forward with our cleanup. This was in response and in context to concurrence with the State. In regards to the Governor and the media, and the focus on what the Governor's letter is saying, he's curious as to what EPA can say at this time regarding whether or not they have state concurrence that they are going to move ahead. He also wants to know how the State views that in this forum.

Commissioner McLerran said that the comment was made at the last Basin Commission meeting because there had been a community meeting in which a number of folks had called on the Governor to veto any action by EPA that was planned. He felt that it was really important to say that EPA wanted to work with the State; they are working with the State. It's very important to coordinate their activities and work in partnership. Every day, they are working in partnership

up and down the valley on the cleanup actions, and continue to do a ROD Amendment as well. His comment was meant to address that the Governor does not have veto power over the ROD itself. He indicated that there has also been a State Attorney General's opinion as a result of that comment which does affirm that. So it was not meant in any way to say that EPA is not going to work together as they want to continue to partnership and so on. It was meant to say that there is no veto and was just a statement of fact.

Commissioner Hardesty said that the State has certainly expressed the Governor's thoughts on that. There are some things that the State agrees with in the proposed ROD, and some things they are concerned about. The State has always understood how that works and that there is not an authority for the Governor. However, they continue to weigh in and be involved, and certainly put their positions forward as to what they would like to see changed in the proposed ROD Amendment. The State will continue to work with EPA on trying to get those changes in the proposed Amendment that they would like to see move forward.

25) Special Announcement: As this was his last meeting serving on the BEIPC board, Commissioner Currie said that he first wanted to thank the public, and pointed out that it's extremely important that the public stay involved, not only in the Basin Commission, but involved in their communities. He also wanted to thank Mr. Rusty Sheppard, Mr. Bill Rust, and the late Mr. John Snider for their help and input to the BEIPC. He expressed thanks and appreciation to the BEIPC staff, Mr. Terry Harwood, and Ms. Jeri DeLange, for their work over the years; as well as the BEIPC board, and indicated that it's been a pleasure to serve on the BEIPC with everyone. He also wanted to single out Commissioner Jon Cantamessa and Commissioner Jack Buell for their work and dedication to their communities. He thanked the local agencies, EPA and IDEQ, and local staff. He singled out IDEQ, not only for their work with the BEIPC, but for Kootenai County (i.e. landfill, transfer station, and building and planning department). He appreciates the work that IDEQ has done and the partnerships.

In closing, he commented that he thinks communication can be improved as sometimes he has felt that workable solutions are not listened to. He thanked the BEIPC Commissioners for their service and working together.

26) Adjourn: There being no further business; Commissioner Cantamessa adjourned the meeting at 3:39 p.m.