

BEIPC Minutes
Basin Environmental Improvement Project Commission
6/21/06 Meeting

Coeur d'Alene Inn, 414 W. Appleway
Coeur d'Alene, ID

Attendees:

Mr. Terry Harwood (Executive Director)

Commissioners Present:

Ms. Sherry Krulitz (Chair)

Mr. Rick Currie (Vice Chair)

Mr. Michael Bogert

Mr. Jack Buell

Ms. Toni Hardesty

Mr. Jay Manning (Secretary/Treasurer)

Mr. Phillip Cerner

Alternates:

Mr. Curt Fransen

Mr. Grant Pfeifer

Staff Present:

Mr. Mike Beckwith

Ms. Jeri DeLange

Mr. Dave George

Mr. Rob Hanson

Mr. Ed Moreen

1) Call to Order and Introductions: The BEIPC Chair, Commissioner Sherry Krulitz, called the meeting to order at 9:30 a.m. She welcomed everyone and introduced the Basin Commissioners and the Executive Director, Mr. Terry Harwood. She also introduced and thanked the Congressional Staff for attending which included: Ms. Stefany Bales (Senator Crapo); Mr. John Martin (Senator Craig); Mr. Mark Compton (Representative Otter); along with Mr. Luke Malek, the new constituent service specialist in Coeur d'Alene for Governor Risch; and State Representative, Mr. Dick Harwood. She then recognized Commissioner Jay Manning who introduced his new alternate for the BEIPC, Mr. Grant Pfeifer, Regional Director of the Spokane Department of Ecology.

2) Change in Coeur d'Alene Tribe Commission Representation: The Executive Director, Mr. Harwood, reported that he received a letter dated June 15, 2006 from the Coeur d'Alene Tribe notifying the BEIPC that the Tribal Council had designated Mr. Chief Allan, Tribal Chairman, as their Basin Commissioner and Mr. Phillip Cerner as his alternate. Commissioner Rick Currie commented that according to his interpretation of the BEIPC by-laws that Mr. Cerner was not eligible to serve on the BEIPC board as he was not a Tribal Council member.

Mr. Harwood informed everyone that he had conducted some research in anticipation of this issue and reported that the BEIPC may go into executive session under Idaho Code Section 67-2345(1)(f) to discuss the matter as there were indications that it may result in possible litigation. He explained that Idaho Code allows an executive session under these circumstances in order to consider and advise its legal representatives in pending litigation or where there is a general public awareness of probable litigation.

3) Motion for Executive Session: Commissioner Currie made a motion to go into executive session under Idaho Code Section 67-2345(1)(f). The motion was seconded by Commissioner Michael Bogert and passed unanimously. At 10:33 a.m., Commissioner Currie motioned to come out of executive session, seconded by Commissioner Michael Bogert. The motion was approved unanimously and the general session reconvened.

Commissioner Krulitz asked Mr. Curt Fransen (Idaho Attorney General's Office) to give his interpretation of the discussion regarding the Tribe's representation on the BEIPC. Mr. Fransen reported that he was requested by Commissioner Toni Hardesty to whom he provides legal counsel as the Director of the IDEQ (Idaho Dept. of Environmental Quality), and by extension the BEIPC, to let the public know the advice that the AG's office provided. He stated that the language is very clear (according to the Idaho Statute that created the BEIPC), that the Tribal Council is to appoint a BEIPC Commissioner from the ranks of Tribal Council. He said that the MOA (Memorandum of Agreement) between the parties also incorporates the same provision.

Mr. Fransen further explained that the Statute allows the BEIPC Commissioners to adopt their own policies and procedures; and that they agreed that an alternate may be appointed in the BEIPC protocols. However, he pointed out that qualifications for the alternate were not specified. For this reason, the AG's office concluded that the Tribe's appointment of Mr. Cernera as a BEIPC alternate was not in violation of the Statute, nor a violation of the MOA, and was consistent with the protocols adopted by the parties.

4) Approval of Minutes: Commissioner Krulitz asked if there were any corrections to the BEIPC minutes from February 22, 2006. Commissioner Jack Buell motioned to approve the minutes as written, seconded by Commissioner Hardesty. The motion was approved unanimously.

5) Update on Water Treatment and Mine/Mill Work: Mr. Bill Adams (EPA) gave a presentation on mine/mill work and water treatment. He mentioned that a temporary bridge was installed at the Golconda site for the Phase I work this spring. The bridge will stay up through the Phase II work that will begin later this summer. Mr. Adams indicated that the site posed human health and ecological impacts; and that it was being remediated because of the risk to human health through recreational use exposure.

Commissioner Jay Manning inquired about: 1) funding for the project; 2) how the work was being prioritized for human health or ecological risks; and 3) whether the remediation activities were being coordinated efficiently, or if it would be necessary to come back to deal with the ecological work. Mr. Adams answered that the highest priority for EPA funding was human health, but that they would do ecological work as they remediate for human health impacts. He

also remarked that they anticipate that they will continue to receive funding for the ecological work as the human health work is being completed.

Mr. Adams discussed the work for the other mine/mill sites. He reported that they are dealing with metal loading in the ground water at the Rex site up the East Fork of Nine Mile Creek. To reduce the loading, they will try to divert the water so that the waste rock pile may dry out and be capped. Mr. Cernera asked what effect this would have on water quality and the level of zinc concentrations. Mr. Adams replied that it should be very effective. Mr. David Fortier (BLM) reported that the zinc levels are currently between 6-20 ppm, in part because the water has been passing through the tailings. He believes that by diverting the water, infiltration through the tailings will decrease by 70-80% and the zinc concentrations would be greatly reduced although they do not know by how much yet. Mr. Adams added that it may take some time before all of the zinc reductions are seen while the water drains out.

At the Constitution mine/mill in Pine Creek, Mr. Adams indicated that remediation work will include moving the tailings from the lower site to the upper (away from the creek), covering the area with clean soil, followed by revegetation. He also pointed out that the BLM has a water treatment project underway at the site. For Canyon Creek, he reported that monitoring wells and piezometers were installed in order to conduct sampling for a hydrological evaluation. The information will be used to get a better understanding of the interaction between ground and surface water; and to better define the mass flux of zinc, cadmium and lead dissolved in ground water that ultimately ends up in the South Fork of the Coeur d'Alene River. At the Success mine, Mr. Adams indicated that new Apatite was added to the ground water treatment project and that the INL (Idaho National Laboratory) should have their final report ready in September.

Commissioner Krulitz suggested that it may be helpful to schedule a half-day Basin Commission field trip for the August 16 meeting since a few of the commissioners were new. Mr. Harwood agreed that it was a good idea. He mentioned that it was his intent for the next meeting to show all of the projects that were going on in the whole Basin and that it was important to do so.

6) Update on NRDA Activities (Natural Resource Trustee Council): Mr. Brian Spears (USFWS) thanked the BEIPC for the opportunity to give an update and public announcement on the Coeur d'Alene Natural Resource Damage Assessment (NRDA). He reported that a press release was issued on June 19, which stated that the Trustees in a partnership with the USFWS, BLM, Forest Service, and the Coeur d'Alene Tribe released the "*Draft Coeur d'Alene Basin Interim Restoration Plan*" for a 30-day public comment period. The purpose of the draft plan is to identify restoration alternatives under CERCLA for addressing mining-related damage to natural resources in the CDA Basin to restore, replace, or acquire the equivalent of the injured resources. The Trustees reached consensus on the proposed alternative projects in a coordination agreement with the State of Idaho. Mr. Spears indicated that he was the main administrative contact and that the public comment period would end on July 18. The draft plan may be viewed at the USFWS web site: <http://www.fws.gov>. After the public comments are reviewed, the final interim plan will be prepared.

7) Site Recontamination Issue: Mr. Harwood informed everyone about a recontamination issue at the East Rose Lake boat launch that he came across while visiting various sites throughout the

Basin. He said that the recontamination consisted of a large amount of fine-silt sediment that had been deposited in a small depression at the boat launch during spring runoff; and that the material had been tracked all over by people walking through it. He pointed out that the recreational area had been paved with asphalt so that it could be cleaned up more easily to prevent recontamination issues.

Mr. Harwood mentioned that he took samples of the material to send in for testing as the paved surface made it a clean place to collect an “uncontaminated” sample and find out the level of contamination in the sediments moving down the river. He stated that the ROD action level for lead at recreational sites is 700 ppm. The sediment that he sampled at the boat launch was found to contain 3,700 ppm of lead, 3,200 ppm zinc, and almost 100 ppm arsenic. Mr. Harwood said that he wanted people to see the problems with the river and understand the need to provide a facility that can be uncontaminated fairly easily. By paving it, the contaminated sediment may be washed back into the river. If the facility had been built with crushed rock, it would be recontaminated during high flow events. He added that people say the majority of the sediment coming out of the North Fork is clean, but the concentrations coming out of the South Fork must be pretty high as the combined material is 5-6 times higher than the cleanup level.

Mr. Cernera inquired about the status of the boat launch area that had been recontaminated. Mr. Mike Beckwith (CDA Tribe TLG Rep) commented that he and Mr. David Fortier (BLM) saw that it had been hosed off about a month and a half ago. Mr. Fortier mentioned that part of the plan developed for the Rose Lake site was pressure washing and that the Idaho Dept. of Fish & Game have been maintaining it by using a pressure washer system. Mr. Cernera pointed out that the revegetation along the banks would also be recontaminated and that washing the pavement is doing nothing for the plants growing there. He stated that this issue goes back to Commissioner Manning’s concern about human health and the ecological component.

Regarding a question that was asked about Basin monitoring, Mr. Fortier reported that a systematic monitoring plan was in place to track sediment concentrations over time and that the USGS has gauging stations to record this information. The annual results should be available this winter.

8) Presentation of 2006-2010 Five-year Work Plan: Mr. Brian Spears (TLG Chair) presented the draft five-year work plan and indicated that it had been drafted in cooperation between the Executive Director and the TLG. Mr. Harwood then reviewed the process for the development of the work plan.

9) BEIPC Discussion on Five-year Plan: Commissioner Krulitz stressed to everyone that the BEIPC would not be taking a vote until after public comment was taken.

Commissioner Currie mentioned that Kootenai County made an error in regards to the previous proposal for Section 1.3.1 on institutional controls and indicated that they would like to delete the new paragraph and insert the old paragraph. The language (for the old paragraph) reads as follows: *“Development of an ICP is necessary to help protect remediated areas from recontamination to protect public health, support economic development and construction projects, and facilitate commerce.”* He emphasized that the next sentence was very important to

Kootenai County. *“At areas designated for cleanup actions and where no remedy is yet in place, an ICP may be necessary as well to protect public health, to support economic development and construction projects, and to facilitate commerce in the interim. Issues left to resolve include, but are not limited to; the geographic extent in which the ICP will be implemented, repository locations for ICP waste material, how the development of the ICP will allow for local input and comment, and how governmental entities will incorporate the ICP. Active communication and planning between the public and local, state, and federal governments will continue in the Basin ICP process. IDEQ will continue to lead this effort.”*

Commissioner Currie simplified the reason for replacing the new paragraph with the old by saying that Kootenai County believes there is the possibility of the lake and river to be included in an ICP under the new language; and that they are very concerned about this. Commissioner Krulitz asked for clarification regarding if what he read was directly from what was adopted last year. He answered that it was. Mr. Harwood explained that Commissioner Currie was going back to the language in the previous five-year plan that was approved by the BEIPC last year. Commissioner Manning asked for clarification on which paragraph was being suggested to be replaced. Commissioner Currie responded that it was only the first paragraph. Mr. Cernerla asked for a point of order and indicated that he would like to see the paragraph first.

Mr. John Snider (CCC Chair) commented that Commissioner Currie wanted to put the old paragraph back in the ICP section because it was originally approved in the 2005-2009 work plan. However, during the process of updating the 2006 annual work plan, the paragraph was changed and the new statement did not contain the areas designated for cleanup actions. He expressed his concern on having areas in the ICP if they are not designated by Superfund; or related to bodies of water that are not considered a primary concern and designated for cleanup action under Superfund. Mr. Snider also mentioned that the general feeling from many of the lakeshore and river property owners, and associations, was to question why they would be listed for the ICP if the area was not designated for cleanup actions. He asked why they would be inclusive and suggested that there could be an argument made against this.

Mr. Snider then pointed out that the Basin Commission is at a juncture now on whether the language should be left the way it is, or if the designated areas should be put back into the five-year work plan as it was approved in August 2005 (and then taken out in February 2006). He said that Commissioner Currie indicated that Kootenai Country made a mistake and that the language should be changed by replacing it with the old paragraph. He stressed that the one sentence referenced by Commissioner Currie was very important: *“At areas designated for cleanup actions and where no remedy is yet in place, an ICP may be necessary as well to protect public health, to support economic development and construction projects, and to facilitate commerce in the interim.”*

Commissioner Hardesty asked for clarification from Mr. Snider as to whether he believes that if the current language is replaced with the previous version, that it precludes the ICP from occurring in those areas at the present time. Mr. Snider answered in the affirmative; and indicated that they are not trying to prevent areas from being included in the ICP if they need to be cleaned up, but rather they are trying to keep the whole lake and Spokane River area from being included in a broad based ICP. He understands that the ROD (Record of Decision) states

that action is needed wherever the contaminants come to lie, so this issue is not being ignored. However, they do not want the lake or Spokane River in the ICP because they are not designated under the ROD at the present time.

Commissioner Hardesty asked Mr. Snider if she understood his position correctly that if there were an applicable location and particular problem concerning dredging activity or something similar, that it would be subject to an ICP. Mr. Snider agreed and explained that Kootenai County was talking about establishing a two-tier system for the Upper and Lower Basin in regards to the ICP administrative area map. He remarked that the counties recognize that if an area outside the boundary is contaminated, then it would need to be taken care of.

Commissioner Bogert indicated that this issue is more a technical matter; and that he and Commissioner Manning had discussed what authority there was to implement institutional controls in an area where there was no remedial activity called for in the ROD and clearly in the lake. He believes that the question being asked is whether an ICP is contemplated for the lake; and that Commissioner Currie and Mr. Snider's perspectives are simply technical clarification more than anything else. Mr. Snider agreed that Commissioner Bogert was correct and that they are seeking clarification to be included in the work plan.

Mr. Cerna inquired if there was a need to have a broader discussion on the ICP for language on Section 1.3.1, so that the BEIPC would be in a better position to understand what language should be included. He indicated that if a motion was made for an amendment, he would like to request a brief caucus to discuss the issue with his legal staff. Commissioner Krulitz suggested that the meeting be opened for public comment, and that the BEIPC would not take a vote until after lunch. She indicated that this would allow time during lunch for legal consultation.

Commissioner Manning indicated that he respectfully disagreed with Commissioner Bogert as to this matter being a minor technical issue. He believed that it was more a policy issue. He suggested that one way to deal with it would be to take public comment now and expressly defer this particular section of the work plan until the afternoon session. This would allow concentrated comment to talk about all the issues inherent in the institutional controls program including the geographic scope; and focus on the parts of the plan that are in agreement. He remarked that he prefers a substantive discussion on the ICP; particularly in regards to his concerns on the geographic scope, and where it applies or not applies.

Commissioner Krulitz asked the commissioners if they had a problem with rolling public comment into the afternoon session and discussing it at one time. Mr. Harwood indicated that he thought there would be some public comment on the rest of the work plan, rather than just the ICP section. Commissioner Krulitz asked Commissioner Manning if he was okay with holding public comment on the ICP until after lunch, but continuing the rest of public comment on other issues. He agreed.

10) Public Comment: Mr. Rusty Sheppard (Kootenai County TLG Rep and Spokane River Association) commented that Kootenai County and the Spokane River Association's perspective was that the current methodology for site disturbance in this area was controlled by what was interpreted under the CWA (Clean Water Act). In particular, that the local agencies (Kootenai

County) handle the lakeshores and part of the river; the Corps of Engineers controls the bed of the river and lake, and the banks of the river; and the rest of the lake area is controlled by the Department of Lands. He indicated that if it was changed to what is being proposed by the PHD (Panhandle Health District) and if the river falls under CERCLA requirements for the ICP, then the three entities would lose control and the PHD would be the sole agency. Mr. Sheppard pointed out that this was their main objection as they want more local control of the banks and the property outside the banks of the river and lake.

Commissioner Hardesty asked Mr. Sheppard if this was a jurisdictional issue. Mr. Sheppard answered that it was; and that they believe they would receive much better coverage using the CWA criteria and the local agencies along with the IDEQ and the Corps of Engineers. He also pointed out that they believe the local entities can do a better job than the PHD because it is located in Kellogg. He indicated that this was the difference between the ICP and the current criteria of the CWA.

Commissioner Manning asked Mr. Sheppard if he believed that it would be acceptable for the river association to have the three to four agencies that he discussed implement the ICP. Mr. Sheppard responded that in essence they already have an ICP based on the zoning laws and the way the CWA is working. He indicated that they do not prefer another agency superimposing themselves in that area and taking other agencies out of the mix. Commissioner Manning replied that he did not agree that the local zoning ordinances would meet the same requirements as an ICP. He asked who would be in charge and what standards would apply. He also questioned whether the current agencies would agree that an ICP be applied in these areas, or whether they would apply sub-standards if they were kept in charge. He reiterated that he cares about who makes that decision and what standards would be enforced. Mr. Sheppard responded that he had seen the standards of the three agencies and that he believed they were more stringent than those that would be imposed by an ICP.

Mr. Brian Spears (USFWS and TLG Chair) mentioned that in the last page of the BEIPC packets was a summary of what was discussed at the last TLG meeting. He said that the TLG agreed with the May 8, 2006 draft ICP for the most part, but with the acknowledgment that other discussions had not yet taken place. He suggested limiting discussion on the ICP to the map with the acknowledgment that those other discussions may potentially happen in the future. Mr. Spears indicated that he personally had no problem with putting the old paragraph back in because the purpose of an ICP is to protect human health and the environment; and that is what the paragraph says. He reiterated that the other discussions had not happened yet and that he did not believe they were going to be resolved today. Mr. Spears suggested that it may be helpful to rename that section the CDA River Boundary ICP, or something to denote that outside area and have the other discussions another day.

Commissioner Manning said that he was going to make a suggestion in the afternoon session that the BEIPC agree to give direction to the TLG and technical people to go back and discuss exactly that and bring back a recommendation to the BEIPC on whether the ICP should apply outside of the CDA River floodplain; and if so, whether it should be a different ICP. He added that more information needed to be collected to make that determination about the appropriateness of applying the ICP outside those boundaries because he did not have all the

answers; and that there seemed to be data indicating there was a continuous line of heavy metal contamination from the Upper valley to the Spokane River in Washington. Commissioner Manning indicated that the Dept. of Ecology would clearly like the lake to be addressed at some point, but believed that the LMP (Lake Management Plan) should be able to do this. He said that this leaves the lower Spokane River and some other areas. He brought up that the Dept. of Ecology is doing cleanup actions in the Spokane River; and that they are open to talking about whether there should be an ICP in Washington. Commissioner Manning feels that the BEIPC needs to have people who know the area bring back information from all the different perspectives on what would be the best way to proceed in terms of the potential application of the ICP; or whether an ICP should extend to those areas beyond the blue line of the map.

Commissioner Bogert commented that he liked the ideas presented by Commissioner Manning and Mr. Spears; and that it would be very valuable for the commissioners to get different perspectives on the scope and how the process would work. Mr. Spears responded that it would be appropriate for the BEIPC to give that task to groups like the TLG as it was a very polarized issue and would take some effort to work through. Commissioner Hardesty added that she was not sure if the BEIPC would be ready to reach a decision by the next meeting. She suggested some sort of interim compromise limiting the ICP while recognizing that there was another bigger issue to be dealt with. She also proposed to conclude that further discussion (at the present time), but emphasized that no one was suggesting that the discussion did not need to happen. She pointed out that this would require multiple work by the TLG. Mr. Harwood said that he was going to mention the same thing because if you postpone dealing with the ICP issue until the August meeting, then there will not an ICP until 2009.

Lunch

After the meeting reconvened, Commissioner Krulitz introduced and welcomed Ms. Jeanne Bock (PHD Director, Region I) and Mr. Jerry Mason (Attorney for PHD). She also recognized Representative Dick Harwood and thanked him on behalf of the BEIPC for carrying the bill for the county TLG representative funding.

11) Update on County TLG Representation: Mr. Harwood reported that the Legislature approved an appropriation for \$60,000 for the BEIPC and State of Idaho (IDEQ) to assist the counties in funding their representatives on the TLG (technical leadership group). He indicated that they are in the process of working on the necessary paperwork and that the funding would become available on July 1. He brought up that some people have asked if the funds needed to be spent all in one year; and that he wanted people to know that the funds needed to be obligated in the appropriation year, but that provisions have been made to carry the funding over the next few years.

12) Other Public Comment: Commissioner Krulitz asked if anyone had public comment that did not have an opportunity to speak during the morning session, other than on the five-year work plan which would be provided later. As no one came forward, Commissioner Krulitz moved onto the next presentation.

13) Presentation of Proposed Institutional Controls Program (ICP) for Basin: Mr. Rob Hanson (IDEQ) indicated that he would be presenting the work of the PFT (Project Focus Team) for the Basin ICP. He mentioned that everyone had information regarding the Basin ICP (draft rule, copy of map, position statements for Kootenai & Benewah counties, letter from the Washington Dept. of Ecology, and letters of support from the cities of Mullan, Wallace, Kellogg, Osburn, as well as the Silver Valley Economic Development Corporation) in their board packet including a background paper that he wrote. The PFT participants included representatives from the TLG, CCC, EPA, IDEQ, and the PHD.

Mr. Hanson explained that the proposed ICP was a regulatory program that was designed to protect remedial actions and human health work in OU-3. In particular, the program regulated excavation activities to ensure that contaminated soil was disposed of safely. He added that the work of the PFT was guided by the ROD; and that it was anticipated that the Basin ICP could be modeled after the one in the Box that had operated successfully in the Silver Valley for over ten years.

Since the BEIPC would not be implementing the actual ICP, Mr. Hanson pointed out that the BEIPC was being asked to provide recommendations to the PHD board on who would be the implementing entity. He clarified that the BEIPC would not be approving the rule that would be implemented, but rather making recommendations that would go to the PHD board for their consideration because they are required to do their own community rulemaking process under State Law which includes public participation.

Mr. Hanson suggested to the BEIPC to consider the draft rule, the various positions offered by the PFT, public comment, and the comments in the board packets in order to decide on what type of recommendations to make to the PHD board. He then presented information on what the recommendations could include.

In regards to the boundaries for the ICP map, Mr. Hanson commented that the regulatory agencies wanted to make sure that all possible areas of contamination were covered; while other agencies wanted to have only those areas that needed to be included. He said that it was a challenge to develop the proposed boundaries because not all of the sampling had been completed, and that it would take another 3-5 years to finish. He mentioned that the PFT agreed that the ICP should be flexible to allow discretion to require compliance with regulations if the property contained contaminated soil.

Mr. Hanson indicated that there were areas of disagreement as shown in Kootenai County's position statement. He reported that Kootenai County was proposing a two-tier system that would include the following:

- Tier 1 – The ICP would apply to the CDA River floodplain in Kootenai County; and
- Tier 2 – If there was no sampling data to show whether a property owner was in/out; then the property owner could request it, or the PHD and county would have to agree that the property needed to be sampled.

At the conclusion of Mr. Hanson's presentation, a question and answer period followed. Mr. Harwood emphasized his concern that a lot of cleanup work had been done in the Basin and that

unless an ICP was implemented; there would be no provisions to protect it. He mentioned that it had taken six months to develop the proposed Basin ICP and that it could take another six months to try and include the other areas into an overall ICP. This would mean missing the opportunity to get it approved by the Legislature in 2007 and that it may possibly take until 2008-2009. Mr. Harwood pointed out that there was the potential for human health problems with all of the development that was occurring.

Upon further discussion, Mr. Cernera brought up that the cleanup had been ongoing for twenty-five-years and that things needed to be done right. He believed that if more time was needed to get the Basin ICP right, then the BEIPC should do it. He suggested that if people carefully reviewed the draft language for the ICP, there were several inconsistencies. Under subsection S in the ICP, he said that it related specifically to what was in the ICP and what was not.

Mr. Cernera indicated that he did not understand how you could have three versions being contemplated for Section 1.3.1 when you look at subsection S. He commented that the language was “squishy” and that in Commissioner Currie’s proposed change it referred to: “*At areas designated for cleanup actions and where no remedy is yet in place.*” He asked why the language was not being used that was directly laid out for the ICP, so that there would be no questions. He concluded that he would be very much in favor of moving forward, but that he believed the inconsistencies should be corrected and that there may not be enough time at today’s meeting.

Mr. Harwood said that he disagreed with Mr. Cernera’s statement because the work plan is just a general statement of intended work items, where the rule is the legal requirements that must be met and needs to be more specific (as it needs to be passed by the Legislature). Mr. Cernera remarked that the language did not need to be identical, but that the nature and intent should be articulated in the work plan (i.e. what is in and what is out?) in order to make the document consistent.

Discussion then centered on the rulemaking process for PHD and the timeframe needed to get it through the Legislature, along with additional information provided by Mr. Jerry Mason (Attorney for PHD).

Commissioner Krulitz brought up the appeals process for the Basin ICP and inquired whether it would be the Kootenai County Commission or Shoshone County Commission working in conjunction with the PHD board to appoint a hearing officer if needed. She also asked who that person might be. Ms. Jeanne Bock (Director of PHD) answered that the PHD would hire an independent hearing officer who would bring recommendations to the board for approval or denial, or modification if additional information came forward.

Further discussion focused on the work plan language for 1.3.1; and whether to move forward with the proposed rule and map for the Basin ICP.

Mr. Harwood pointed out that the map was an appendix to the draft rule. He explained that the draft rule specifically had boundaries and applied to the South Fork of the Coeur d’Alene River from its headwaters to its confluence with the North Fork and the main stem of the Coeur

d'Alene River from the confluence of the South and North Forks to the mouth of Harrison. He stated that the map was part of the written document.

Mr. Cernera asked whether the Harrison beach area would be inserted into subsection S of the ICP. Mr. Harwood indicated that it would be, and that the area also included the Trail of the Coeur d'Alenes (inside and outside the administrative boundary indicated on the Appendix 1 map) except for that portion within the Tribal reservation.

Commissioner Manning proposed adopting the rule as drafted with the map (as the jurisdictional area to which the rule applied), and also to add a new paragraph into the work plan (not the ICP) directing the TLG to develop recommendations for the BEIPC regarding whether there should be an ICP beyond the jurisdictional area now indicated; and if so, what should it look like, and where should it apply? He indicated that the TLG had diverse representation in order to take this issue on and bring back recommendations to the BEIPC. Upon further discussion, Commissioner Hardesty indicated that it would be premature at the present time to pass a motion to request that the TLG formulate a position.

The BEIPC continued deliberation in regards to this issue and a suggestion was made by Commissioner Hardesty that it may be helpful to have Kootenai County's two-tier position articulated. Commissioner Currie introduced Ms. Sandy Young (Kootenai County Staff) who gave a presentation on the proposed two-tier system and how it would work. Ms. Young indicated that she handled the site disturbance ordinance for the county.

Break

14) Update of ICP Operations in the Box: Mr. Jerry Cobb (PHD) gave an overview of the ICP operations in the Box. He indicated that the fundamentals of the program do not change, and that he did not believe there was a need to have two parallel processes. He also described the success of the Box ICP and the economic benefits to the Silver Valley.

15) Public Comment on Five-Year Work Plan: Commissioner Krulitz asked the public if they had any additional comments on the five-year work plan. Hearing none, she moved forward with the commissioner's comments so the plan could be voted upon.

16) BEIPC Comments on Five-Year Work Plan: Commissioner Manning pointed out that the work plan section contained information about the ICP and that he was hesitant to make a motion until public comment was also taken on the ICP.

Commissioner Hardesty made a motion to adopt the five-year work plan with the exception of 1.3.1 and to request that the Executive Director come back with a recommendation on language at a later date to resolve this section, seconded by Commissioner Currie. After additional discussion, the motion and second were withdrawn.

Commissioner Hardesty made a new motion to request that the Executive Director form a PFT (Project Focus Team) to evaluate and come back to the BEIPC at a later date with recommendations for some sort of institutional control "like" program outside the geographical

areas that were discussed today that would address under what circumstances, and in what areas, the institutional controls may be needed and would address the who, what where, when, and why (i.e. Who would do it? When would it be required? Who would implement it?) and make those kinds of recommendations to the BEIPC. The motion was seconded by Commissioner Currie.

Commissioner Krulitz called for discussion. Commissioner Cernera said that he wanted to point out once again that within the change for the Five-Year Work Plan Section 1.3.1, he would recommend that the BEIPC more clearly define the area in which these institutional controls would be adopted as per the draft Basin ICP document subsection 5S which are within the bounds of the Administrative Boundary Map. He indicated that this was one of his concerns early on due to the “squishy” language in the proposed work plan section and suggested that it would be better defined using language directly out of S.

Mr. Harwood asked for clarification in regards to the PFT working on redrafting this section 1.3.1, if language should be considered from S of the draft ICP? Commissioner Cernera answered affirmatively and Harwood agreed that it would be done. Commissioner Currie asked Commissioner Cernera if he was looking more towards “site specific” in regards to rules. Commissioner Cernera responded that he is specifically looking to remove the sentence that talks about areas that have remedial design and those that do not because he believes the language is too weak. He feels that it can be better defined more specifically as per subsection 5S of the draft Basin ICP.

Commissioner Buell questioned what a new study was trying to do as there was already a lake management program. Mr. Harwood said that what he is perceiving the motion to be is that he is being requested to put together a group of people to take a look at other areas outside of what is proposed for the ICP for the Coeur d’Alene River and work it through the TLG and PFT process in order to come up with recommendations for the BEIPC.

Commissioner Hardesty offered further clarification. She indicated that there was recognition that there may be areas (under certain circumstances, locations, or activities) that are outside of the geographical boundaries of the proposed Basin ICP where it would be appropriate to have some sort of control program where there may be the potential to discover a hot spot, etc. She explained that there needs to be a mechanism to properly reveal those areas and this would be very different than the draft Basin ICP discussed earlier. She emphasized that it would be very site specific, but that it needs to be addressed. Commissioner Hardesty reiterated that the purpose of the motion is to ask the PFT to look at approaches to determine when, where, or how it may be appropriate and make a recommendation to the BEIPC. She asked if this information helped to clarify her motion.

Commissioner Buell indicated that it did not. He inquired whether the area being looked at was from Harrison East or Harrison Northwest; and where it was going because there was already a lake management program and the proposal for a two-tier system for the Basin ICP being presented by Kootenai County.

Commissioner Hardesty answered that it would be outside of the geographical area of the Administrative Boundary for the Basin ICP, and that we are asking the PFT to determine

whether or not there are appropriate controls; and where not, they may recommend an additional program such as how dredging materials would be handled. Commissioner Buell inquired if this area was outside the outlined boundary on the map. Commissioner Hardesty indicated that this was correct.

Commissioner Currie asked how many people the Executive Director planned to put together for the PFT group. Mr. Harwood estimated that it would be approximately 6-7 people.

Commissioner Krulitz called for the question. The motion was passed with six commissioners voting in favor (Commissioners Currie, Hardesty, Manning, Cernera, Bogert, and Krulitz) and one commissioner opposing the motion (Commissioner Buell).

Commissioner Krulitz then asked for a second motion to approve the five-year work plan. A motion was made by Commissioner Hardesty to approve the work plan with the exception of Section 1.3.1. Commissioner Currie seconded the motion and the motion passed unanimously.

17) Public Comment on ICP: Mr. Harwood indicated that he would work with the Human Health PFT and the TLG to complete Section 1.3.1 of the work plan.

18) CCC (Citizens Coordinating Council) Comment and Presentation: Mr. John Snider (CCC Chair) presented the CCC comments. He indicated that Mr. Glen Rothrock (IDEQ) and Ms. Rebecca Stevens (CDA Tribe) made an excellent presentation on the LMP survey at the last CCC meeting. He added that the counties are concerned about the LMP process and the content of the plan. Mr. Snider reported that Mr. Ed Moreen (EPA) gave a presentation on repositories and how difficult they are to locate. He pointed out that they are trying to find locations to build new ones. He also mentioned that Mr. Jerry Cobb made a presentation on the ICP. He apologized to Mr. Cobb that there were not more CCC people at the meeting. He said that usually there were 18-22 people, but only several people were in attendance. Mr. Snider suggested that people need to support the CCC if they want it to exist. He thanked Mr. Tom Beierle for the good support that he provides to the CCC and indicated that he was very pleased.

Commissioner Bogert said that he appreciated Mr. Snider's comments about the EPA's support and asked for suggestions on what the BEIPC could do to provide energy. Mr. Snider answered that he would check with people. Commissioner Krulitz thanked Mr. Snider on behalf of the BEIPC and expressed appreciation for the work that the CCC does.

19) Public Comment: Mr. Jim Hollingsworth commented that his position has always been consistent with the need to put the watershed back together. He said that the BEIPC and other areas of government divide the watershed up into small pieces for jurisdiction and then it becomes turf warfare. He feels that this is what happened today; and suggested that the Basin needs to be looked at in a holistic approach according to the NAS (National Academy of Science) report. He also asked why the institutional controls would be different in separate areas. He said that he believed it was all the same and that the ICP should be uniform throughout the watershed including the Tribal reservation. Mr. Hollingsworth suggested that the Tribe could administer the ICP on the reservation, rather than the PHD. He brought up that there could be an ICP in Washington State and that the Washington agencies would be the ones to administrate it.

He added that it was disingenuous to have an ICP in some areas and not in others. He believed that it would be much better for everyone to work together to clean up the Basin; and that the ICP should be applied to the whole Basin.

Mr. Rogers Hardy (Benewah TLG Rep and Kootenai County property owner) indicated that he was speaking as a private citizen. He said that the history of the citizen involvement used to be under the CAC and that it was heavily energized. However, when the BEIPC was established the CAC became the CCC. He believes that the people who used to be involved feel that the CCC is too structured. Mr. Hardy said that he agreed with Mr. Snider about the level of involvement for the CCC meetings. He suggested that open houses be held on the ICP (rather than CCC meetings) at Rose Lake and other areas to inform the public.

On the ICP, he pointed out that Mr. Cobb said sampling was very important. Mr. Hardy indicated that the undeveloped areas of the Rails-to-Trails were under sampled and that he feels they should have some special attention. He does not understand the need for a new PFT, but mentioned that whoever works on it needs to have both documents (Basin ICP and Rails-to-Trails TLOP). He also commented that he feels too much funding is being spent on recreational areas, rather than on restoration and response.

Ms. Toni Hardy (Kootenai County property owner) suggested that everyone involved with the ICP get a copy of the TLOP (Trail Long-Term Operating Plan). She indicated that they own 1.6 miles of land that the railroad has an easement on and that they have serious problems with law enforcement. She also mentioned that the Tribe has no criminal jurisdiction, and that they want the ICP administrated by agencies that can enforce the laws.

20) BEIPC Discussion on the ICP: Commissioner Hardesty made a motion that the Basin Commission recommend that the County (Kootenai) and the Health District work together on language that will address a two-tier system approving it for Shoshone County west of the confluence of the North and South Fork of the Coeur d'Alene and to work on a mechanism that would enable the county government and health district to jointly select a hearing officer when an appeal process is filed. If they would work on that language, and that language could move forward to the board of the health district. It (Basin ICP Rule) would not come back to the Basin Commission for approval because there is not time, or a good time for the BEIPC to review, in order to implement this and have it go to the Legislature in January. Commissioner Buell seconded the motion.

After further discussion, Commissioner Manning asked Commissioner Hardesty to consider an amendment that would simply direct the PHD to work with the county (as soon as tomorrow) to try and develop changes to the proposed rule that would work for the PHD and the counties for a mutually acceptable approach rather than be brought back to the BEIPC in August. As there was no second to the amendment, Commissioner Manning withdrew it. Upon final discussion, Commissioner Krulitz called for the question. The motion passed unanimously.

Commissioner Krulitz thanked everyone for attending and mentioned that the next meeting would be held on August 16. The meeting was adjourned.