

Basin Environmental Improvement Project Commission
01/19/05 Workshop

Coeur d'Alene Resort Casino
Worley, Idaho

Attendees:

Commissioners Present:

Ms. Sherry Krulitz (Chair)
Mr. Rick Currie
Mr. Jack Buell
Ms. Toni Hardesty
Mr. Chuck Matheson
Mr. Ron Kreizenbeck
Mr. James McCurdy
Mr. Terry Harwood (Executive Director)

Alternates Present:

Mr. René-Marc Mangin
Mr. Curt Fransen
Mr. Chief Allan
Mr. Jon Cantamessa

Staff Present:

Mr. John Roland
Mr. Phillip Cernera
Mr. Ed Moreen
Mr. Rob Hanson
Ms. Jeri DeLange

At 9:00 a.m. the workshop began.

1) Welcome and Introductions: The facilitator for the workshop was Mr. Bill Ross of Ross & Associates Environmental Consulting, Ltd. He started the workshop with introductions of all the participants and the new Executive Director, Terry Harwood. Mr. Ross reiterated that the workshop was not a public meeting and the public would not be allowed to participate. He then presented a brief overview of the agenda and purpose of the workshop which was to provide background and education concerning implementing statutes, agreements, and protocols, and to update the newer members of the commission. Mr. Ross discussed that the morning session would cover background information on the basin, while the afternoon session would be for brainstorming to develop an action task list. He also mentioned that an executive session would be held from 1:00-2:30 for only the commissioners, alternates, and the new Executive Director in order to discuss personnel matters.

Before the first session began, Mr. Mark Stenger of the Coeur d'Alene Tribe welcomed everyone to the Coeur d'Alene Resort Casino followed by a brief opening ceremony presented by members of the Coeur d'Alene Tribe.

2) Review of CERCLA Fundamentals: Mr. Ed Moreen introduced Ms. Cami Grandinetti, EPA Site Cleanup Unit Manager for Region 10. She passed out a hand-out for CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) or Superfund, and gave a brief overview of the fundamentals. Under CERCLA, Congress gave EPA the responsibility through Superfund law to evaluate hazardous waste sites and identify what cleanup actions would be needed to address those in order to be protective of human health and the environment. She explained that Superfund sites are not easy, they are a complex undertaking. The EPA has policy and guidance in the law to assist them in doing this. She then discussed Superfund law and cleanup decision documents pertaining to the Coeur d'Alene River Basin and the Bunker Hill "Box."

3) Review of Record of Decision (ROD) for (OU) 1, 2, 3: Ms. Grandinetti explained the cleanup areas or operating units (OU's) identified in each of the three ROD's listed below:

- OU-1 Populated areas in the Bunker Hill Box (towns and commercial area between Pinehurst and Elizabeth Park).
- OU-2 Non-populated areas in the box (mining and metallurgical facilities, and Smeltonville flats).
- OU-3 The Basin (areas outside of the box where contamination is found).

The first two decision documents (OU-1 and OU-2) deal with contaminated areas inside the "box" by populated and non-populated areas. The last decision document (OU-3) is for everywhere outside of the box where contamination exists in the CDA Basin.

The non-populated areas within the box have been undergoing cleanup since 1995. Much of that work is largely complete. Those cleanup actions focused on the smelter areas, hillside areas, gulches and places in the floodplain where contamination really piled up.

Regarding the CDA basin cleanup, there is the human health component of the remedy that is very similar to the human health remedy in the Bunker Hill box. That remedy is aimed at preventing direct contact with contamination. This is what the EPA determined would be protective for human health. The ecological component of the remedy is more complicated. The area is large and there is a lot to learn about what can or cannot be done in order to affect real change for the environment. There are two important ways the Basin Commissioners can help, by working with the agencies and the local communities.

As the cleanup process moves through design and construction, there are areas that will be completed. The "box" is a good example. In the City of Smeltonville, all of the residential cleanup actions are complete. The EPA is talking with the communities about doing partial delistings, so those areas can move on. Based on the 1 & 5 Year Plans and the funding that EPA has seen from headquarters, Ms. Grandinetti is expecting that within 5 years the residential cleanup can be completed in the entire box and basin area. That is something we can focus on to give communities certainty in their future.

To date, over 2200 residential yards have been completed in the box with the mining companies doing most of the work. In the basin, approximately 500 residential properties have been completed which is most of the residential cleanup. However, the cleanup work in the non-populated areas of the Basin will take a much longer time to complete because it took many years for the effects of

mining and flooding to spread the metals contamination throughout the floodplain and river corridor. Waste material underground is difficult to understand and the cleanup remedies that will be the most effective are difficult to identify. Ms. Grandinetti explained that it is important that people do not lose sight of the time and work needed to complete the Basin cleanup. The more we understand it, the more we can communicate it to others.

4) CDA Lake Management: Mr. Phillip Cernera of the Coeur d'Alene Tribe made a presentation on how lake management issues fit into the Superfund process. The EPA Record of Decision (ROD) signed in 2002 specifies that rather than conduct CERCLA remedial remedies in the lake, a joint lake management plan (LMP) between the State of Idaho and the Tribe needs to be developed to reduce nutrients entering the lake. The LMP would then hopefully manage hazardous substances which exist in the bed sediments of Lake Coeur d'Alene. In order to achieve this goal, the LMP must be: 1) adopted by both the Tribe and State; 2) implementable; 3) funded; and 4) proven effective. If such a plan can be developed and prove to effectively manage the hazardous substances in place, EPA could begin the process of partial delisting of the lake from the Superfund designation.

Mr. Cernera mentioned that funding for the implementation of the LMP is a big issue since no Superfund funds can be used. In addition, no Clean Water Act (CWA) funds have been allocated for 2005 and budget constraints have limited funding from the State. The Tribe offered a \$5M match to the State of Idaho and Federal government. The Tribe believes the time has come to be creative and seek a funding mechanism to implement the LMP or the EPA will be compelled by CERCLA law to develop a Superfund remedy for the lake. Both the Tribe and the State of Idaho prefer a LMP that will manage the metals in place and provide the mechanism to move forward with a partial delisting of the lake from the current Superfund site.

5) Review of Idaho Statute Establishing BEIPC: Mr. Curt Fransen of the Idaho Attorney General's Office gave a presentation on Idaho Statute Title 39 Health & Safety, Chapter 81, Basin Environmental Improvement Act, which established the Basin Project Commission and structure. The Board of Commissioners consists of representatives from the following governmental entities:

1. One representative from the State of Idaho appointed by the Governor of Idaho;
2. One County Commissioner each from Kootenai, Shoshone, and Benewah Counties appointed by the Governor of Idaho;
3. One Federal representative appointed by the President of the United States;
4. One representative from the State of Washington appointed by the Governor of Washington; and
5. One Tribal Council representative appointed by the Coeur d'Alene Tribe.

Mr. Fransen then explained the voting and veto power of the commission members and that the commission shall adopt as the basin project work plan the ROD (Record of decision) for OU-3 to implement environmental remediation and related measures pertaining to heavy metals contamination in the Coeur d'Alene Basin. He noted that the statute only sets up the framework for the Basin Commission to exist and the MOA (Memorandum of Agreement) establishes the things the Commission does.

6) Memorandum of Agreement (MOA): Mr. Bill Ross discussed the Memorandum of Agreement for the Basin Environmental Improvement Project Commission (BEIPC). This agreement defines the conditions of membership and participation between the parties (State of Idaho, Shoshone County, Kootenai County, Benewah County, Coeur d'Alene Tribe, State of Washington, and the U.S.) and

coordinating entities (U.S. Department of the Interior, U.S. Forest Service, and the Spokane Tribe). It also establishes and specifies the authorities and duties of the Basin Commission Board. Other work the Commission may address includes:

1. A Record of Decision (ROD) implementing Phase 2 of the Bunker Hill Comprehensive Cleanup Plan consistent with the 1992 Bunker Hill ROD;
2. Adoption and implementation/coordination of the Lake Coeur d'Alene Management Plan to manage, enhance, preserve and protect lake water quality; and
3. Remediation of heavy metal contamination at specific mining sites in the North Fork of the Coeur d'Alene River.

Mr. Ross explained that any additions or changes to the Basin Commission's work as outlined in the MOA requires an amendment. The Basin Commission will annually approve one and five year plans including budgeting and establishing project priorities. In order to carry out these duties and implement the basin project work plans, the Basin Commission shall seek funding sources from grants, appropriations, donations, gifts, or other appropriate contributions and coordinate with other funding authorities.

Mr. Ross also discussed the advisory groups set up to assist the Basin Commission in its work. The Technical Leadership Group (TLG) was developed to ensure that the technical expertise of the agencies was being implemented in the work projects. The TLG membership consists of federal, state, local, and tribal representatives serving the governmental entities with regulatory or land management responsibilities in the Coeur d'Alene Basin who may be affected by the remedial actions. He then discussed the Citizens Coordinating Council (CCC) which is a forum of all citizens, but not a decision making body. Members must meet one or more membership criteria. The CCC provides three primary support functions to the Commission which are to:

1. Coordinate, with the Executive Director, basin-wide public education and outreach;
2. Advise on community issues and concerns; and
3. Assist with the development and distribution of an information newsletter and assist in hosting a web site containing information about the Commission, future meetings, and projects, with authorization from the Board.

7) BEIPC Protocols: The Executive Director, Mr. Terry Harwood, gave a presentation on the functions of the Basin Commission and its protocols. The key functions of the Basin Commission include the following:

1. Annually approve its one- and five-year work plan (including annual priorities and budget);
2. Develop one- and five-year progress/activity reports;
3. Direct the implementation of its work plan;
4. Appoint an Executive Director to assist the Board in administering its work plan;
5. Receive advise from the TLG and CCC on technical and regulatory issues before the Board;
6. Consult with, and represent the interests and concerns of, organizations, entities, and constituencies it represents;
7. Regularly review the membership and functionality of the two groups (TLG and CCC); and
8. Exercise other duties as described in the Idaho legislation in Section 39-8106.

Mr. Harwood discussed that the Board is required to meet at least four times per year and that each Commissioner may appoint an alternate to attend the Board meetings in their absence. All

Commissioners agree to act in good faith with respect for the interests and concerns of the other Commissioners. Board meetings will be open to the public and an opportunity for public comment will be made at every official Board meeting. He mentioned that new officers need to be elected at the next board meeting on February 16, 2005. Board officers are elected for a two-year term and may be re-elected.

Mr. Harwood then presented the protocols and functions of the TLG and CCC advisory groups. Commissioner Krulitz inquired about the TLG voting procedures and election of officers. She mentioned that the Chair of both the BEIPC and the CCC may be re-elected for a second term as stated in their protocols. However, under the TLG protocols, it is silent about the Chair being re-elected for a second term. She inquired if that meant the TLG Chair could not be re-elected and if it was written that way to keep one agency from chairing the TLG for a long period of time? She also mentioned that of the seven original Basin Commissioners, each one was allowed two appointments to the TLG. However, since that time, the TLG has become much larger with other agencies being represented in the TLG membership. She asked if that meant that only the two representatives of each agency had a vote? Mr. Cernera answered that every entity (governmental agency) in the TLG may be represented by two representatives and they collaborate between the two of them for one vote. He mentioned that sometimes there may be more than two representatives from an entity in attendance, but the TLG has a roster by which the official membership is recognized.

Mr. Cernera then discussed the voting procedures for the Chair. Commissioner Krulitz repeated that her initial concept of TLG representation is that it would consist of a total of 14 appointees. However, the total membership is higher because of the involvement by other entities. She stated that there are seven cities in the counties who are stakeholders, but not all of them are represented on the TLG. She asked if they should have someone at the table to represent them while the work is going on. Both Mr. Cernera and Mr. Harwood agreed that as stakeholders they could. Another topic which was discussed included funding issues for the position of TLG Chair.

Break

8) Five Year Plan Implementation: Mr. Phillip Cernera, Coeur d'Alene Tribe, gave a presentation on the five-year plan for 2004-2008 recommended by the TLG for the Basin. He discussed the scopes and objectives of the work activities proposed for implementation of the OU3 ROD including the Upper and Lower Basin remedies, human health and ecological remedies, institutional control program (ICP), repository development, monitoring, Lake Coeur d'Alene study and management plan. He mentioned that the plan will be continually updated as the Commission reviews it.

9) Funding: Mr. Rob Hanson, IDEQ, made a presentation on funding for the Basin cleanup work. He discussed the state funding mechanisms to the Environmental Remediation Fund (Box and Basin) which is funded through transfers from the WPCA (Water Pollution Control Account) and state appropriations to IDEQ. Other funding sources include federal appropriations from the CWA (Clean Water Act) and CERCLA (Superfund). However, no CERCLA funding may be used for the LMP (Lake Management Plan). Because funding appropriations are not certain for the future, the Board will need to look into other resources for funding.

Before breaking for lunch, a motion was made by Commissioner McCurdy to go into Executive Session immediately following lunch. The motion was seconded by Commissioner Currie and unanimously approved.

Lunch

After lunch, the Basin Commissioners, Alternates, and the Executive Director met in Executive Session under Idaho Code 67-2345 to discuss personnel matters.

The workshop reconvened after a motion was made to go out of Executive Session by Commissioner Currie, seconded by Commissioner Kreizenbeck, and unanimously approved. Commissioner Krulitz then called the workshop back to order.

10) Brainstorming Session: Mr. Bill Ross gave a brief overview of the information presented from the workshop's morning session. He then conducted a discussion forum by asking each Commissioner to comment on their views of the workshop and the Basin Commission. After discussion, the Executive Director, Mr. Harwood, presented the topics for the afternoon brainstorming session. The session generated the following list of action items to be worked on by the Executive director, Staff, and TLG:

- Sources of funding available for use in the Basin and what coordination there is among agencies. Consider having a Funding PFT (Project Focus Team) headed by the Executive Director;
- Approaches for making the Commission and its committees operate or conduct work more effectively and efficiently;
- Approaches for helping the BEIPC be a positive force in the cleanup and helping local communities move forward through and beyond the cleanup;
- How to improve lines of communication;
- Funding for the Chair of the TLG membership and grant funding;
- Funding for TLG membership and grant funding;
- Examine TLG representation and voting procedures;
- Include representatives of specific political entities, cities, etc. in PFT's when they have a stake in the issues under discussion; and
- Develop a process to review the Basin Commission's Five-Year Plan.

The action items will be discussed further at the February 16 Board meeting.

11) Workshop Adjourned: Commissioner Krulitz thanked Mr. Ross for facilitating the workshop and everyone for their participation.