

Rocky Flats Coalition of Local Governments Board Meeting Minutes
Monday, December 6, 2004
8:30 – 11:45 a.m.
Mt. Evans Room in the Terminal Building
Jefferson County Airport, Broomfield

Board members in attendance: Gary Brosz (Director, Broomfield), Mike Bartleson (Alternate, Broomfield), Lorraine Anderson (Director, Arvada), Clark Johnson (Alternate, Arvada), Sam Dixon (Director, Westminster), Ron Hellbusch (Alternate, Westminster), Michelle Lawrence (Director, Jefferson County), Nanette Neelan (Alternate, Jefferson County), Karen Imbierowicz (Director, Superior), Devin Granbery (Alternate, Superior), Shaun McGrath (Director, City of Boulder), Carl Castillo (Alternate, City of Boulder), Jane Uitti (Alternate, Boulder County).

Coalition staff members and consultants in attendance: David Abelson (Executive Director), Kimberly Lohr (Assistant Director), Rik Getty (Technical Program Manager), Barb Vander Wall (Seter & Vander Wall, P.C.), Jennifer Bohn (Accounts Manager).

Members of the Public: Dave Shelton (Kaiser-Hill), Karen Wiemelt (Kaiser-Hill), Joe Legare (DOE), Karen Lutz (DOE), Frazer Lockhart (DOE), John Rampe (DOE), Cliff Franklin (DOE), Richard Schassburger (DOE), Scott Surovchak (DOE), Norma Castaneda (DOE), Dean Rundle (USFWS), Laurie Shannon (USFWS), Mark Sattelberg (USFWS), Amy Thornburg (USFWS), Andrew Todd (USFWS), Mark Aguilar (EPA), Steve Gunderson (CDPHE), Marion Galant (CDPHE), Shirley Garcia (Broomfield), Dave Davia (Westminster), Bob Nelson (Golden), Mark Gershman (City of Boulder), Jeanette Alberg (Senator Allard), Doug Young (Rep. Udall), Kimberly Cadena (Rep. Beauprez), Patricia Rice (RFCAB), Roman Kohler (Rocky Flats Homesteaders), Anne Fenerty (Boulder Valley League of Women Voters), Ron DiGiorgio (USWA Local 8031), C A Miller (USWA Local 8031), Dan Chesshir (RFSOIU #1), Karen Hollweg (citizen), Hank Stovall (former Board member), Lisa Morzel (former Board member), Todd Neff (Daily Camera).

Convene/Agenda Review

Chairwoman Karen Imbierowicz convened the meeting at 8:35 a.m.

Business Items

1) Motion to Approve Consent Agenda – Sam Dixon requested that the Coalition museum letter and minutes be removed from the consent agenda for further discussion. Gary Brosz motioned to approve the consent agenda. Sam Dixon seconded the motion. The motion passed 7-0. Sam asked if adopting the minutes would make a Coalition issue discussed in the minutes a fact. Karen Imbierowicz said she could approve of the minutes as recording a conversation accurately, but still object to the concept discussed. Lorraine Anderson motioned to approve the November minutes. Michelle Lawrence seconded the motion. The motion passed 7-0.

The Board then discussed the letter drafted to DOE-Legacy Management regarding the DOE report to Congress on the feasibility of a Rocky Flats museum. Sam referred to David Abelson's memo explaining the draft letter and his decision not to incorporate suggested changes from Westminster regarding prioritizing acquisition of mineral rights. She said she does not believe that her proposed comments rule out a museum. Karen stated that Westminster's position is not agreed to by all the governments, and this a letter from the Coalition. Sam motioned to amend the letter to include Westminster's position on prioritizing mineral rights over funding the museum. Shaun McGrath said he is not sure this letter is the appropriate venue for a discussion of mineral rights acquisition, and he also believes it is inappropriate for a Coalition letter to express the opinion of one city. He also suggested amending the letter to include copies to the entire Congressional delegation and the Office of Management and Budget. David explained that in drafting the letter he walked the fine line between all the government's competing interests and positions on the museum, thus the Coalition letter requests that DOE not limit options at this time. Lorraine agreed with Shaun, stating the Congressional delegation had worked hard to keep these options open for the community, and she does not believe in having to trade off anything for the museum. Gary agreed with Shaun and Lorraine, stating it is a risky proposition to tie these issues together. He said Westminster's point that the museum is lower priority is correct and he is anxious to resolve mineral rights, but it is possible to say that about any of the cleanup and closure issues being dealt with. Karen Imbierowicz asked if there was any support from the Board to second or pass Sam Dixon's motion to amend the letter. The other six governments were all opposed. Lorraine Anderson motioned to approve the letter with Shaun McGrath's proposed amendment. Karen Imbierowicz seconded the motion. The motion passed 6-1 (with Westminster opposing).

2) Executive Director's Report - David Abelson reported on the following items.

- Senator Allard has requested the Government Accountability Office to investigate elements of the Rocky Flats cleanup to confirm cleanup standards have been met and to determine whether the cleanup is sufficient to allow for transfer of the land to USFWS.
- The Coalition governments are working through a new white paper process to review ideas for independent review. Broomfield has drafted four white papers and the City of Boulder is working with Boulder County on another one. The papers will be reviewed the following week and will then go to the Board for consideration. The independent review committee will also be meeting within the week to consider responses to the Coalition's Request for Proposals for a consultant to work on the ORISE review.
- Senator Allard, working through the appropriations process, got \$500,000 for the Rocky Flats Local Stakeholder Organization (LSO). This amount was originally supposed to be split between three sites. David is working with Senator Allard's staff and DOE-Legacy Management to set up a multi-year grant so the LSO would not have to renew annually. Shaun McGrath said the Coalition should be proactive in acknowledging the funding mistake and pushing for a multi-year grant. David said he has been working with local government staff on a letter to the Senator thanking him for the authorization language and appropriations, thus he should be able to add something about funding over multiple years. He also emphasized that the money is for the LSO, not the Coalition. Lorraine Anderson said she would rather speak in favor of the LSO than the Citizen Oversight

Panel that Westminster proposed in their museum letter. David said he has talked with Westminster and the letter to Senator Allard he has drafted is consistent with their position. A discussion of Westminster's letter was postponed to the end of the meeting.

Public Comment

Anne Fenerty (Boulder Valley League of Women Voters) said she had been attending the Coalition's independent review meetings and is concerned there have been no minutes from the meetings and were only two agendas. Also, she said the purpose of independent verification and validation should include validation of data and methodology, a review of landfill regulatory compliance, the final closure plan, and new technologies. It was estimated that it would cost between \$500,000 and \$900,000, but now DOE has only allocated \$25,000 for independent review. If the purpose of the independent review is to instill public confidence in the cleanup, a cursory examination of the project will not accomplish this. Anne also questioned the Coalition's support for a museum and cited problems with cleanup and stewardship at Weldon Spring, suggesting it is not a good site to use as an example. She concurred with the idea that the MOU is extremely important to resolve in order to determine who is in charge of what, including money, fences, and mineral rights.

Doug Young (Rep. Udall) made an observation regarding the mineral rights issue, stating that even if the agencies or Congress came up with the money for their purchase there is still the issue of having willing sellers. He reviewed efforts to work with the mineral rights owners and suggested the Board hold a special session hosting a conversation with these owners.

Fiscal Year 2005 Budget Hearings

Barbara Vander Wall stated that the Coalition is a political subdivision of the State and as a local government is subject to the budget laws of states and requires a budget hearing. Notice of the hearing took place. The budget must be filed by the end of December. Karen Imbierowicz opened the budget hearing by asking if the public had any comment on the Coalition FY05 budget. The public had no comment, and Karen closed the public comment portion of the hearing. She then moved to Board discussion. Sam Dixon asked for a clarification on the personnel section regarding the Assistant Director salary increase and incentive. David Abelson explained that the incentive is for Kimberly Lohr's contract with the Coalition. Lorraine Anderson motioned to approve the Coalition's FY05 budget and appropriate the funds. Michelle Lawrence seconded the motion. The motion passed 7-0.

Final Refuge Plan

Dean Rundle (USFWS) explained that the final refuge comprehensive conservation plan (CCP) must still clear the Secretary's office and be published in the Federal Register. He anticipates it will be approved as is and be published before the deadline of December 28, 2004. Dean then reviewed the final CCP and the selection of Alternative B.

Dean summarized wildlife and habitat management, restoration, and public use management as follows:

Habitat management:

- Improve habitat for a variety of species including Preble's meadow jumping mouse
- Variety of tools - fire, grazing, mowing
- Integrated pest management to control weeds
- Removal and revegetation of roads and stream crossings
- Work with Colorado Division of Wildlife to manage wildlife species
- Deer and elk management includes hunting and culling
- Prairie dogs will be allowed limited expansion
- Reintroduction of native extirpated species (e.g. Grouse)

Public Use Management:

- Limited high school programs
- 12.8 miles of multi-use trails, 3.8 miles of hiking only trails
- Visitor contact station
- Interpretive overlooks
- Viewing blinds
- Trailheads and parking facilities

Dean clarified that hunting will consist of youth and disabled groups which will be allowed access a couple times per year. Also, the trail alignments may be modified slightly in order to match trails coming in from local jurisdictions. The trail to Lindsay Ranch would open almost immediately, but then the rest would be opened over the next five to fifteen years. He then explained why the other three alternatives were not chosen. Alternative A had limited restoration which could result in long-term impacts to resources, and the limited public use is not consistent with the Fish and Wildlife Improvement Act. Alternative C did not provide the level of public use desired by the public, and extensive restoration and monitoring would be cost prohibitive. Under Alternative D the cost and extent of public use programs and facilities was unnecessarily large; it also precluded some restoration and would have resulted in more extensive impacts.

Dean next described the controversial issues that had arisen during the public involvement period, and how USFWS resolved them.

1. Contamination and cleanup - Final Environmental Impact Statement was revised from earlier drafts to include a discussion about fencing or other means of demarcating DOE retained lands. Also, the CCP restated the assertion that land will not be transferred until it is certified clean by EPA and CDPHE.
2. Public use and environmental impacts - Proposed facilities will impact less than 1% of refuge area, with only minor impact anticipated. Also, proposed uses are compatible.
3. Hunting - Hunting is a priority use. The refuge will be closed to other uses on the two hunting weekends per year, and will be limited to short-range weapons (archery and shotgun only). Deer tissue samples showed very low radionuclide levels well below the

risk-based level for consumption of Rocky Flats deer tissue, with the final report due this week.

4. Public use facilities - 72% of the trails will be built along existing road corridors and facilities will be located in previously disturbed sites. Trails in Rock Creek will be limited to hiking and will be closed seasonally. Southern trails will be multi-use, allowing equestrians and bikes, while northern trails will be pedestrian with some bike use.
5. Road restoration - 72% of the trails will be constructed along existing road corridors, with removal and restoration of 13 stream crossings.
6. Habitat management - Sensitive habitat will be monitored every two to three years to document the effectiveness of weed control and habitat restoration efforts.
7. Weed management - USFWS will use the full suite of weed management and restoration tools.
8. Deer and elk management - Hunting and culling will be used to achieve population targets and reduce impacts from overbrowsing/overgrazing.
9. Species restoration - USFWS will evaluate the suitability of reintroducing the Sharp-tailed grouse and monitor native fish recently introduced to Rock Creek.
10. Conservation - USFWS will work with others to coordinate resource management and protect wildlife movement corridors.

Jane Uitti asked what would happen if an animal was wounded during hunting. Dean described hunting ethics and state law on recovering wounded animals. Jane noted that Boulder County is not pleased with Alternative B being chosen, and she asked about planning around unknown DOE/USFWS boundaries. Dean said final boundaries are yet to be determined but they have a good idea of where they will be. If the boundary changes the plan will not be applicable on DOE retained lands, nor will the trail system be expanded. Lorraine Anderson thanked Dean for considering the diversity of ideas and people surrounding the site. Gary Brosz agreed and asked if Dean was comfortable with all aspects of the plan or if there was something added due to public comment that he did not agree with. Dean responded that he believed it is a good plan and he is comfortable with it. Gary then asked about potential access barriers to monitoring stations on USFWS land. John Rampe (DOE) stated there will be a few points for surface water monitoring in which access barriers would have to be worked out. Dean emphasized that cleanup and monitoring now and into the future would always trump the refuge plan.

Gary asked for further clarification on hunting. Dean explained that archery equipment and shotguns with slugs would be allowed during the youth and disabled programs, likely for deer and elk. There is no huntable population of game birds at this time. Gary asked if access restrictions in place for the Preble's meadow jumping mouse would automatically change if the mouse is declassified as threatened. Dean said if the mouse is delisted it would not mean carte blanche lifting of restrictions as the mouse is still rare in Colorado, and it also would not mean that protection would still not be a priority for the refuge system. Sam Dixon asked if the deer tissue samples reflect an average contamination level, and Mark Sattelberg (USFWS) said the levels reported are by animal. Sam said DOE should put fences around monitoring stations and

retain those areas. Dean said USFWS sent a letter to DOE providing recommendations on how to demarcate the land.

Shaun McGrath took exception to the statement that Alternative C was not chosen as it did not provide the level of public use desired by the public as the City of Boulder, Boulder County, and Superior all preferred Alternative C to Alternative B. He added that he was encouraged that the trails would be developed over a long time period, but discouraged that 72% of the trails are existing trails and roads. Dean clarified that even though those roads already exist they will not be opened to the public immediately.

Draft Memorandum of Understanding

Frazer Lockhart (DOE) explained that the legislation creating the national wildlife refuge also called for a Memorandum of Understanding to be developed between DOE and the Department of Interior (DOI). The legislation mandated the final MOU be published in the Federal Register by December 2003. However, they do not have a draft yet that both agencies feel comfortable with, thus the MOU was sent to the agencies' respective headquarters in Washington, D.C. to be further negotiated.

Frazer distributed an annotated outline of the MOU and explained what would be captured in each section. Frazer reviewed the following sections expected to be captured in the MOU: Purpose, Authority and Scope; Background; Definitions; Applicable Laws; Relevant Agreements; Covered Substances and Response; Retained DOE Property; Existing Private Property Rights; Identification Of Lands To Be Transferred; Buildings And Other Improvements; DOE Funded Activities; Tort Claims; Enforcement Actions; Dispute Resolution; No Third-Party Rights; Cost Recovery, Contribution Or Other Action; and, MOU Modifications. Regarding retained DOE property, Frazer stated that the MOU would not specifically define the boundary since they must still finish remediation work but it will clearly lay out the fact that DOE will retain lands with primary administrative jurisdiction.

Frazer then discussed the primary sticking point: mineral rights ownership. Part of the challenge is the provision in the refuge legislation requiring that the Act do nothing to impinge on the rights of mineral owners, making it contrary to the Act to using any sort of condemnation action. Even if they did have willing sellers, neither USFWS nor DOE have the millions of dollars needed to make those purchases. Frazer noted that DOE has a new hire with a legal background who has taken on this task and is moving the issue forward. He expects a draft MOU both agencies would be willing to sign within weeks or months.

Dean Rundle (USFWS) emphasized that there is no disagreement locally between the agencies as they have been working together on MOU issues regularly for the past two years and cooperating on current work without an official document. He also stated that neither DOE nor DOI is telling the other that they should pay to purchase the mineral rights, but rather, the primary issue is over which agency would have to administer the mineral rights (which neither is set up to do). Dean stated this duty is less appropriate for USFWS especially since mining

operations are occurring in ecologically sensitive areas. Once mining is done and the area reclaimed, Dean expects USFWS to take jurisdiction.

Shaun McGrath stated the 1966 Refuge Act, key in guiding the comprehensive conservation plan (CCP), requires that any refuge have a plan, but this site clearly does not have a refuge in the refuge system yet because the lands are not specifically outlined. Frazer said this is not a problem as the refuge legislation lays out the procedure to finalize the boundary for the lands and DOE's responsibilities. He said the boundary is 90-95% certain, and it is doubtful it will change substantially. Dean added that the refuge legislation required that the CCP be written within three years (which is December 28, 2004). USFWS would not typically write a CCP for a new refuge at this phase of operation, but it is also not unusual. He provide an example of acquiring land piecemeal in cases of the Endangered Species Act, sometimes taking two generations of landowners. Shaun raised concern over a public process to discuss a CCP in which it was not known exactly where it would apply, and that the remaining 5% difference could be important. He also asked if the recommended four-strand fence demarcating land and enforcement of access restrictions would be decided as part of the MOU. Frazer said the MOU speaks to the process for the two agencies to work together at a high level and would not go into that level of detail.

Shaun next raised concerns over the time it took (six months) to confirm if there was a contamination problem in cell K-14, and stated he hoped there would be better systems in place post-closure. Frazer responded that this type of work takes time and it is the reality of it, but perhaps they could have made the process more transparent. He stated the MOU would make clear that this type of work would be DOE's responsibility. Shaun then voiced frustration over the mining issue holding things up and wondered how DOE could find hundreds of millions of dollars for Kaiser-Hill for early closure but cannot find money for long-term protection. Dean again stated that having willing sellers is a critical issue, especially with fully capitalized mining operations. Dean and Frazer then described in detail which mines are operating where. Lorraine Anderson noted that the mineral rights in the Industrial Area are subordinated, and asked about the expense involved in acquiring the remaining mineral rights. Frazer said he does not have specific costs but it would be in the tens of millions. Doug Young (Rep. Udall) suggested the agencies consider leaving specifics on mineral rights acquisition out of the MOU in order to move it forward. Frazer said he believes that is the direction they are now moving. Lorraine said it would be helpful to know which lands will be transferred and where mining will occur in order to determine impacts on hydrology and the health and safety of citizens. She said it may be critical to use eminent domain.

Gary asked if the MOU would cover which agency would be responsible in the event of a remedy failure. Frazer said the refuge legislation and the MOU both emphasize that DOE would be responsible. Gary asked if USFWS would be managing flora and fauna of the entire site. Dean said that is not yet the case, but the MOU talks about further agreements and annual funding for this sort of work. Sam Dixon asked if they plan to secure the surface water monitoring areas, and Frazer said that is primarily worked out through the RFCA, and how it is enforced will be laid out in the post-closure regulatory document.

Anne Fenerty asked how much land would be retained by DOE, and Frazer said approximately 1200 acres, and the MOU would detail funds that DOE must allocate to USFWS in order to manage habitat on their lands.

Draft Groundwater Interim Measure/Interim Remedial Action

Karen Wiemelt (Kaiser-Hill) began by describing the scope of the Groundwater IM/IRA. The document includes a sitewide groundwater analysis, with the exception of groundwater associated with the Present Landfill and Original Landfill which will be addressed in their respective IM/IRAs. The analysis will consider areas with existing groundwater treatment systems, but not the performance of these systems, and recommend accelerated actions.

Steps included in the IM/IRA process: 1) determine Analytes of Interest (AOIs); 2) describe the nature and extent of contamination based on AOIs; 3) identify groundwater contamination areas that require an alternative analysis; and, 4) conduct alternatives analysis. In Step 1, determining the AOIs, they developed an initial list of analytes that could potentially impact groundwater based on integrated monitoring plan monitoring. They then determined which analytes have historically been detected above surface water standards and which analytes have contiguous areas of groundwater contamination. These AOIs include VOCs, uranium, and nitrate.

In Step 2, describing AOI nature and extent of contamination, the Site conducted an AOI pathway analysis on subsurface soil, groundwater, and surface water. Areas were then identified for further evaluation that pose a potential for groundwater to impact surface water quality. Next, in Step 3, identifying areas requiring alternative analysis, they initially looked at fifteen areas and screened the areas against the remedial action objectives (RAOs). The RAOs are consistent with the Action Level Framework outlined in RFCA and are based on based on surface water standards and risk-based surface water preliminary remediation goals. The RAOs are also anticipated to guide the final Site remedy for contaminated groundwater. The screening identified seven areas/plumes that require alternative analysis. Under the final step the Site evaluated accelerated actions such as source removal, in-situ enhanced biodegradation, phytoremediation, and collection and treatment. The “no action” alternative was not considered. After evaluation the Site recommended source removals, in-situ enhanced biodegradation, phytoremediation, and additional investigation (followed by remediation).

Karen said the draft document should be available for review within a week and she will walk through the details of the document at a special meeting on December 13th.

Jane Uitti asked which seven areas would be remediated. Karen listed Ryans Pit, 903 Pad, Mound site, Oil Burn Pit #2, Solar Evaporation Ponds, East Trenches, and the Carbon Tetrachloride plume. Gary Brosz asked if a single well shows a particular AOI, but the surrounding wells do not, if the reading would be disregarded. Karen said it would be disregarded if it did not exist elsewhere, but she would explain those types of details at the meeting next week. David Abelson said he expects to have a letter drafted with Coalition

comments on this document by the January Board meeting since the 45-day comment period would close prior to the February meeting.

Public Comment

There was no further public comment.

Updates/Big Picture Review

General - Karen Imbierowicz thanked Michelle Lawrence for her work on the Board as Michelle will be leaving the Coalition due to county term limits.

Big Picture - The Board reviewed the Big Picture. The January meeting will include a briefing on the Original Landfill IM/IRA, a review of Coalition government independent review white papers, and a discussion on the formation of the Local Stakeholder Organization.

Shaun McGrath also requested that Coalition staff draft a letter for Board approval by the January meeting regarding the MOU. The letter should address the fact that the MOU is overdue, the document's relationship to the CCP, and removing the issue of mineral rights acquisition and administration from the MOU if it cannot be agreed upon.

Westminster - Sam Dixon said she was not present at the Board meeting the prior month when the discussion of continuing *ex-officio* appointments occurred. Karen Imbierowicz said the sentiment expressed at that time was that Hank Stovall and Lisa Morzel had been very helpful in transitioning new members into their roles. Sam said she thought the reason Hank and Lisa were made *ex-officio* members was due to their extensive knowledge, not to help their municipality. She said it was an honorable position respecting their history, and she did not see why the Coalition was getting rid of them. Lorraine Anderson said that during the prior discussion the Board had expressed thanks and respect for their work, however they did not see it necessary to maintain as the new members had transitioned in and the organization is beginning to look forward to transition. Sam maintained that their membership had been an official designation of respect and she wanted that registered as her comments on the subject.

Arvada - Lorraine Anderson voiced concern over the suggestion raised in Westminster's museum letter to Legacy Management that a Citizen Oversight Panel consisting of Broomfield, Westminster, and Northglenn be formed instead of an LSO. She said the Coalition had worked hard to speak with one voice and is a model for the rest of the weapons complex, thus she did not like the preemptive tone of the message. Gary Brosz said he agreed with Lorraine's comments and it is also Broomfield's position, although it may conflict with past Broomfield letters. He said Broomfield does not want to use a COP for LSO type issues, but it may be a way of managing education and outreach as is done currently under the COMRAD program.

Sam stated the suggestion for a COP was not meant to eliminate anyone, and the letter was written before money was appropriated for the LSO. She explained that the COP is an

alternative way to maintain oversight and monitoring in the event no money is available for an LSO, and that the Westminster letter had been misinterpreted. Shaun McGrath said he respects Westminster's right to write their letter, but he appreciated the clarification since he too had been confused over the intent. He suggested discussing how to broaden the scope of the LSO rather than limiting it. David said the draft letter to Senator Allard expressing thanks and support for the LSO and LSO funding had gone out to staff for review the prior week and should be ready for signature by each government by the January meeting.

At 11:32 a.m. Karen Imbierowicz motioned to move into Executive Session for the purpose of discussing personnel matters per Section 24-6-402 (4)(f) C.R.S. Lorraine Anderson seconded the motion. The motion was approved 7-0.

The Board came out of Executive Session at 11:40. Lorraine Anderson motioned to amend Kimberly Lohr's incentive contract. Shaun McGrath seconded the motion. The motion passed 7-0.

The meeting was adjourned by Karen Imbierowicz at 11:42 a.m.

Respectfully submitted by Kimberly Lohr, Assistant Director