

Scenic Rivers Joint Study Committee as Established by the Second Joint Principles Document

October 29, 2013

10:00

Tulsa Tech Riverside Campus

801 East 91st Street

Room A-11

Tulsa, OK

Meeting start time 10:16

Members Present:

Arkansas Representatives	Oklahoma Representatives
Brian Haggard	Shellie Chard-McClary
Marty Matlock	Shannon Phillips
Thad Scott	Derek Smithee

I.

- Derek Smithee – Oklahoma Water Resources Board (OWRB) discussed the contents of the agenda and summarized the items. He discussed the posting of the agenda and distribution of the agenda.
- Those seated at the table introduced themselves and then the public in attendance introduced themselves (see sign in sheet)
- It was determined that there would be a break for lunch around 11:30 and that the committee would be walking to the next building to the cafeteria in order to save time. The public was invited to do so as well.
- The committee has administrative details that must be addressed in this meeting

II.

- The committee needs to elect a chair, vice-chair and secretary to address the administrative needs. So far Derek Smithee of Oklahoma and Brian Haggard of Arkansas have been coordinating efforts to get the initial meeting planned
- Arkansas is to have the agree upon \$600,000 in bank by now to be housed with the Oklahoma-Arkansas Compact Commission (OACC), so the secretary should be from OK
- Suggestion by Marty Matlock of Arkansas that there be to Co-Chairs who alternate who runs meeting
- Committee agreed that Smithee and Haggard would be the Co-Chairs with Smithee running the meeting today
- The role of the Secretary will be to take notes, provide them to the committee, and to authorize payments following all necessary procurement requirements
- Shellie Chard-McClary was selected to be the Secretary
- By the next meeting Chard-McClary and Laura Brown with OACC will discuss process for payment, etc. and Chard-McClary will explain process to the full committee at the next meeting

- All meetings of this committee will held in the Tulsa vicinity since it is approximately equal distance for all committee members
- The committee would like to have a website to make all information available to each other and the public
- The Oklahoma Conservation Commission will house the website and Shannon Phillips will ensure that the site is developed

### III.

- Discussion of why this committee was formed. In summary, this committee is an entity working for the Governors of Oklahoma and Arkansas. We will make recommendations to the Governor to raise, lower or leave as is the Oklahoma Scenic River Water Quality Standard for Phosphorus (P).
- More clarity of the purpose of this group will be discussed later.
- Smithee provided an over of the history of the P Standard and discussed that the Illinois River (IR) is not as pristine as it once was. It is important to look at the water quality of the IR.
- There have been many studies completed regarding P levels in water bodies. The studies seem to point back to the same numeric level - something around 0.0375 for P
- The OWRB and OK Legislature established the P Standard and allowed 10 years to comply
- The Joint Principles group and agreement was established and the result was that Non-Point Sources (NPS) should do best they can to reduce P and Point Sources (PS) would have their permit limits frozen at 1 mg/L while the issue was studied further
- A workgroup from OK, AR, EPA, academics, etc. was created and reviewed available information. This group made recommendation with a 7-2 or so vote to keep standard as established
- The Second Joint Principles was developed and signed which created this committee of 6, and established that money be set aside to do study (see Joint Principles for language)
- The charge of this committee is the established in Joint Principles
- Question that must be answered is “how do we establish the no change threshold” that is included in the Joint Principles language?
- Smithee requested that all of the committee read the EPA Guidance Document "Using Stressor-response Relationships." handed out in the meeting as a good starting point for discussion at the next meeting.
- Matlock and Smithee discussed the need to look at the language; discuss what is "undesirable"? Is it impaired? what is undesirable? Etc.
- Courts seem to be making a lot of decisions. We need to use science and allow communities to decide what is desirable or undesirable.
- OK will defend our Scenic Rivers and AR will fight to protect its water bodies
- Smithee –Should we focus on Scenic Rivers all equally or ranking method? IR was the driving force behind this committee
- Smithee and Matlock discussed that we need to come to common agreement on IR then others will fall into place "easily"; A lot of work needed on IR and do minimal work to confirm in other water bodies; there is always more to learn from other water bodies but focus is IR for this effort

- Thad Scott discussed that there are variables to be considered such as water at individual sites, physical variables, and what the temporal scale are we talking about? Also, studies in the methodology have to have a gradient
- Matlock asked “how do we get low P condition data when we don't have those conditions today?”
- Haggard commented that the focus of this committee is clearly IR; Lee Creek and Little Lee Creek are in the similar area; IR and adjacent areas will have to be included; standards have to be promulgated based on conditions used in the study
- Smithee commented that standards aren't self-implementing; discharge is not only low flow, NPS is high flow, cities are daily, etc.
- Phillips stated that we need to take into account weather conditions; we have to develop standard that applies to all in the same watershed in all weather conditions
- Scott stated we need to look at variations during "critical" and "non-critical" times; is it statistically significant?
- Chard-McClary added we need to keep focus on the science and deal with the implications later. We need to recognize that we won't always agree but we must be respectful and allow everyone to say their piece
- We need to look at who can do this work? 100s that might want to but only a few that can actually do it.
- Smithee thought Jan, Walter Dodds, Ryan are the likely candidates
- Haggard commented that Jan needs to be eliminated due to work on the OK vs AR lawsuit; all committee members agreed that would be appropriate
- Smithee said we could say we want Walter and Ryan if we want or if we could use a Request for Proposal (RFP)
- The committee discussed that we could do pre-qualification and then meet, evaluate, etc.; it will be difficult for this group to set up the detailed studied; we can follow the two documents and focus on IR; may be more people out there; academics may be best choice due to cost; do we want raw data so we can look at the data? do we need to have contract language to allow the data submission to the group and allow them to publish for their use; need to be completed by 2/2016;
- Matlock pointed out that this study approach was viewed as 3 year stalling tactic by AR;
- The committee agreed that a 3 year timeline is really aggressive; that in order to collect data this summer means having a contract in by January; we will need data in February and March in order to account for the “explosion” (extreme growth rate) of population of biological life; Do we have legal ability to extend the timelines contained in the Joint Principles document?
- Clayton Eubanks, Oklahoma Attorney General (OAG) representative stated that there should be no problem extending the deadline if there was progress being made. However, the decision would ultimately be made by the Oklahoma Attorney General and the Arkansas Attorney General.
- Kendra Jones, Arkansas Attorney General (AAG) representative agreed that if progress is being made then extension should be possible
- Scott and full committee discussed that in order to use an entity associated with a university to conduct the research needed for this study we really need

to match up with academic year to use graduate students, post doctoral students, etc. There was also a discussion to make sure we clearly define timelines in order to get reports on time.

- Smithee and Phillips discussed a bias for academic entities over consulting firms due to specific experiences
- The committee discussed that the timeline for data collection is key and that modeling and analysis can take a long time. This will likely get the academic proposals to be 1 year and consultant 2 year and timelines will drive the process. In this case we will not have to have the contractor to provide a lot about the history or politics of this project. The project will only have to focus on the data collection and analysis.
- The committee needs to see the qualification and see what we can get. We will all bring our experience to the table with the various contractors. The more detailed the RFP is the more time it will take to get applicants. Many people may be qualified but don't know who all we will get. The cost of the study will limit what we get. The \$600,000 may limit interest. Rather than looking at what is needed and then establishing the cost, we have an established cost and will have to do the best we can within that budget. We can use data that has already been collected if it is useful and we will need to address this issue.
- The committee discussed the need for a final draft report in the summer of 2016 with our recommendation to the respective Governors by the end 2016. We need to get the scope early and agreement on contractor by March 2014 so that work can start soon or at least by May? Committee is unsure if we can get everything in place until May. The study needs a full 2 year window.
- Phillips asked what happens if we get extreme drought? The committee discussed that there is no such thing as "average" year? We need to avoid extreme weather events, if possible.
- There was a discussion that the OK reps are paid by state so this is a key/top priority. The AR reps have competing issues; however, they are likely very similar to OK since funding is from state. The committee agreed that we will all do our best to meet all of the deadlines.
- There was a discussion about how decisions will be made. The committee agreed that we will try for consensus. If we don't get it we will go forward with a "majority" and "minority" opinion.

### **Break for lunch**

- The committee discussed the likelihood of having a contract executed by March or April and the need to develop a strategy for procurement.
- Matlock suggested that the RFQ application process take about 3 weeks. He suggested that we set criteria such as the applicant has done a similar study, the results of the study must be publishable, etc.
- The committee discussed that we should take top 3 or so top candidates and invite them to meet with committee and give a presentation. We should follow "best value design bid" type approach. The committee will contact people we know who might do a good job on this project in order to make sure we get good applicants. The money that is available for this project should be stated up front so that the expectations were realistic. This approach will

- allow us to work with the selected applicant to negotiate work plan. This process is time well spent. The final three would be interviewed in person.
- The committee discussed that \$600,000 over 2 years is a lot for an academic institution.
  - The committee agreed that no applications would be taken from
    - entities housed in OK or AR
    - entities that had participated in the lawsuit filed by OK against AR and the AR poultry industry
    - entities with financial involvement with committee members
  - Committee asked the OAG and AAG what were any contract issues and if AR rules or OK purchasing rules had to be followed (for OK is using OMES necessary)
  - Eubanks and Jones responded that as long as the committee made decisions in public everything should be fine. They further stated that discussions on the telephone are acceptable but decisions must be publicly. The elimination of candidates must be public unless if they don't meet a set minimum criteria. The committee will be able to go into Executive Session to discuss.
  - Eubanks stated that there was the options of having a group of three to have preliminary discussions that would function basically as a search committee.
  
  - A member of the public stated that in an Arkansas Natural Resource Commission project there were 3 finalists for project and they were all qualified. The Commission completed rating sheets and scores were made public.
  
  - Eubanks and Jones stated again that the more open the better, that telephone call discussions should be limited but email could be used to circulate work product drafts.
  
  - The committee agreed that a “Best Value Process” will be used. Phillips and Matlock will put together a bullet list of qualifications and send to the committee for agreement. The process to apply will be in December. The committee will meet in January to narrow the applicants to three. There will be a meeting in February for presentations on how they will do study and the selection will be made. The committee will work in February and March to work out details with the selected applicant and the final contract should be in place by April 1. The website will have details and the RFQ will refer to documents to make sure they match up with our requirements. The bid documents will go out and be available at the time of proposal selection
  
  - There was a discussion among the committee on if we need to include in RFQ clarifying language on what is “significant” and what is statistical acceptability? What is undesirable? etc. based on the language in Joint Principles Document? The committee should allow them to provide in the proposal or maybe or the proposal should specify? The committee determined that we should let the final 3 answer. We should let the scientific process play out. This body will have a lot of involvement but the contractor needs to weigh in. This group may need to meet in December to discuss. Could we

meet by webinar? Committee determined that web meetings were not good and that we won't do it.

- In the Joint Principles Document in the 4th paragraph on page 3 designates the aesthetics beneficial use as important to this study. We need to establish criteria and have some level of discussions with this group. We all need to understand where we all stand. This will be difficult. If we don't have the money how will we have the investigator determine "undesirable." What are the characteristics of the river we want to uphold? We are not looking at survey at what people want. We may get hung up on this issue. We need to untangle ourselves from it. All 6 of the committee are technical, but also play a policy/bureaucratic role. We think we are technical. We are not policy makers in this case. We have to tell scientifically what we think and then the Governor's will make the policy. Easier for AR to say but for OK we actually deal with policy too. This will be hard.
- A member of the public asked for a point of clarification on the proposals - will all three make presentation same day but will done without other selected applicants present? The committee said that was correct and Eubanks and Jones agreed

**MOTION 1 made by Haggard and Second by Matlock regarding RFQ Use the Request For Qualification based on Best Value Practice. Phillips and Matlock will develop and share with the group during November of what the RFQ and advertisements would look like. The RFQ would be announced December 1, with applications due December 20, and selection of finalists occurring during a January meeting. In the Feb meeting, finalist will make their presentation and the final selection will be made. The final contract is to be in place early April.**

**Motion passed with no dissenting votes (6-0)**

There was a question clarify how the announcement would be made and how we will advertise it. It was confirmed by the committee that the agency websites and usual advertisement process would be used.

**MOTION 1 made by Matlock and Second by Haggard regarding meeting dates:  
Special meeting Dec 2 12:00 pm in Tulsa, Oklahoma  
Regular meeting Jan 6 10:00 am in Tulsa, Oklahoma  
Regular meeting Feb 5 9:00 am in Tulsa, Oklahoma  
Regular meeting March 6 10:00 am in Tulsa, Oklahoma  
Regular meeting October 9 10:00 am in Tulsa, Oklahoma  
Motion passed with no dissenting votes (6-0)**

- Eubanks stated that in the future we need roll call votes on each motion not just by acclamation.
- Matlock was the committee to know that he has role has chair of Cherokee Environmental Commission. This is appointed. He is not paid, etc. He has advised Cherokee Nation that meetings are open to the public.

- The committee has no objections and does not see this as a problematic conflict.
- Eubanks stated that the Oklahoma AG met with Cherokees in advance and explained their position that this is an issue between the two states since the Cherokee Nation does not have water quality standards in OK but that they should engage in the public process.

Joint Illinois River Study Meeting

10-29-13

Sign-In Sheet

<u>Name</u>	<u>Representing</u>	<u>Contact</u>
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Don't forget to sign in