

## **Bonita Peak Community Advisory Group February 28, 2019 MEETING NOTES**

The second meeting of the Bonita Peak Community Advisory Group was held on February 28th from 3 to 6 PM at the Durango Community Recreation Center.

Fifteen of the 17 CAG Members were in attendance, including: Peter Butler, Ty Churchwell, Brian Devine, Anthony Edwards, Jenna Emerick, Marcel Gaztambide, Levi Lloyd, Melissa May, Paul Montoia, Terry Morris, Parker Newby, John Ott, Larry Perino, Chara Ragland, and Charles Smith. Approximately 20 members of the public attended the meeting. Shannon Manfredi facilitated the meeting.

The meeting began with a brief overview about the purpose of CAGs, and a reminder to visit the website: [www.BonitaPeakCAG.org](http://www.BonitaPeakCAG.org) to find meeting dates, agenda, notes, and other information related to the CAG and clean up efforts at the Bonita Peak superfund site. Ty, who has been managing the website and email updates, added that he had created two email lists: one of just CAG members and another that included all meeting participants and others that have signed up to receive updates. A quick round of introductions followed, with CAG Members first introducing themselves, then all other attendees.

### **Corrections to and Approval of Meeting One Notes**

- Chara asked that we revisit and clarify the quorum needed for decisions and how notes are taken.
- Levi asked that we revisit how conflict of interests were defined and resolved.
- Shannon asked that the second bullet on the bottom of page 4, under “CAG Members requested/suggested,” be removed, as it repeats information stated at the top of page 4.

Peter moved to approve the meeting notes with the understanding that there are a couple of issues to be further discussed and removing bullet on page 4. Paul seconded the motion. All ayes. None opposed.

### **Continuation of CAG Structure and Operating Procedures Discussion:**

Organizational items discussed at today’s meeting are listed below, followed by key discussion points and decisions made. This discussion worked from two handouts: *CAG Structure Questions for Discussion*, the handout from meeting one; and the *Draft Bonita Peak CAG Mission Statement and Operational Procedures* handout prepared for Meeting Two by Peter Butler. It was agreed that notes from today’s meeting would be used to prepare a *Second Draft of the Bonita Peak CAG Mission Statement and Operational Procedures* handout. The second draft would be disseminated to CAG members prior to Meeting Three for review. The plan is to discuss and approve each item individually at Meeting Three.

### **Video and Audio Taping**

CAG members discussed this item at meeting one and then tabled it for further discussion. Anthony began by the discussion by noting that there are two different instances that need to be addressed—the press recording meetings in order to accurately report the discussion; and

recording for other purposes, such as making a documentary film or educational project. Generally speaking CAG members did not take issue with audio recordings or allowing the press to record meeting; a camera in the room video recording can cause some discomfort. Ultimately the CAG settled on the prepared statement below, only changing “when approval happened” for video recording.

***Proposed Operational Procedure***

**Video and Audio Taping**

The CAG will allow reporters to record audio to help them accurately report on meetings, but will only allow the press to video record if the CAG votes to support video recording at the beginning of the meeting. Requests to record meetings (audio or video) for purposes other than for improving accuracy of reporting must be requested and approved by a vote of the CAG at the beginning of the meeting. Executive sessions will not be recorded.

**Conflict of Interest**

The recusal clause is about direct financial benefit and encouraging disclosure of any potential conflict in order to have transparency in the decision making process. While government entities like the City of Durango may have an interest in any Animas River action, it does not necessarily mean they have a “conflict of interest,” in that often they are making decisions on behalf of the public (i.e., public interest) as opposed to personal benefit or gain. Even given the fact that the City and other water providers are operating as a business when making these decisions, they are still decisions being made in the public’s best interest. The intent of having a recusal clause in a conflict of interest is for decisions in which an individual or entity would “financially benefit.” For example, if the CAG is making a decision regarding a range of actions at a site and one of the options being considered would be completed by a company that would benefit the City or another CAG member because they have a relationship to that company, then it would be inappropriate for that member to advocate for that option. Rather they need to disclose that relationship and recuse themselves; or at the very least disclose that relationship and concern to the CAG and let the CAG discuss and determine whether recusal is warranted.

The CAG found the proposed Conflict of Interest language below to be fairly standard and only

***Proposed Operational Procedure***

**Conflict of Interest**

If a CAG member has a direct personal or private interest (particularly financial) in a position the CAG may take, that member should recuse themselves from the discussion or any voting on any motion taken with regard to that position. If a member is not sure if he or she has conflict of interest, the member shall disclose why they might have a conflict and let other members discuss if a recusal is warranted.

made one correction edit:

***Proposed Operational Procedure***

**Members' Terms and Reappointment**

CAG members will serve three-year terms. However, in order to maintain continuity and not have complete turnover of CAG membership, the initial set of CAG members will be split into thirds:

- The initial term of one-third of the original members will be two years;
- The initial term of another third of the original members will be three years; and
- The initial term of the last third of the original members will be four years.

San Juan County and La Plata County will reappoint or newly appoint a person to the CAG after the first two years and then every three years thereafter. The Town of Silverton and City of Durango will reappoint or newly appoint a person to the CAG every three years.

For the rest of the original CAG members, four will have a first term of two years, four will have a first term of three years, and five will have a first term of four years. At the end of members' terms, the CAG will seek applications for the vacancies from members of the public, including CAG members who would like to be reappointed. Then CAG members whose terms are not up will determine who fills the vacancies keeping in mind the importance of representation from diverse community interests including locales within the watershed.

The process for determining which CAG members will serve two and three years, will include members self-selecting to serve only two or three year terms; and then by drawing lots.

Clarification was made that the government entities that have the ability to appoint members to the CAG include: the City of Durango, Town of Silverton, La Plata County and San Juan County, Colorado.

***Proposed Operational Procedure***

**Executive (or Steering) Committee**

Annually, in either December or January, the CAG will choose an executive committee of 3 members including a chair, vice-chair, and secretary. CAG members can nominate other members or themselves for positions on the committee. If more than one person is nominated for a position, members will vote for appointment to that position by secret ballot.

***Executive Committee Roles:*** Co-chairs, odd versus even number of Exec. Committee members, assigned roles and other options for structuring the executive committee were discussed. Ultimately it was decided that:

- the Bonita Peak CAG would have a 3-person Executive Committee;
- at a minimum, the Executive Committee would be responsible for executing and/or delegating tasks between meetings such as: setting the meeting agendas, sending out notes, record keeping, securing meeting venues; researching requests for information; and contacting/lining up presenters;
- tasks would be “generally assigned” to the Executive Committee and those members would determine how they divide and delegate those tasks; and
- that the Exec. Committee be encouraged to delegate tasks to other CAG members to keep all CAG Members engaged and interested.

***Executive Committee Term Length & Reappointments:*** There was some discussion about whether executive committee members should be removed from the lot drawing process, i.e., referring back to the discussion of Member Terms and Reappointments. This led to a discussion of the term length for Executive Committee members. *It was decided that Executive Committee members would serve one-year terms; members can be re-appointed using the same nomination and voting process described above.*

The concept of having an “annual” meeting for selecting Executive Committee Members was briefly discussed, but aside from selecting Executive Committee members, no other “annual decision items” were identified at this time. *Hence, it was decided that Executive Committee Members would be selected on an annual basis in either December or January.*

CAG Members acknowledged the need to put an Executive Committee in place, but also acknowledged that they really did not know each other well enough to determine who should be on the Executive Committee. *Hence, it was decided that the application materials submitted by the CAG member would be provided to all CAG Members for review.* CAG members were also given the option to supplement their application materials to include a statement of their interest in serving on the Executive Committee; or to improve their information (add to or streamline their information—background, interest, experience) to aid the purpose of CAG members getting know each other. Additionally, Brian and Levy (the government appointed CAG Members that had not applied during the application process) would provide a resume, letter or summary of their background, interests and experience relative to the Bonita Peak CAG. *All edits and additions to application materials are due to Ty by March 7<sup>th</sup> Ty will then make them available to the CAG Members for review, so that Executive Committee Members can be selected at the March meeting.*

### **CAG Member Participation and Meeting Attendance Expectations**

This discussion was directed at the importance of CAG members attending meetings in order to make informed decisions. With this in mind, the CAG discussed how many meetings a member can miss before he or she should be removed from the CAG. The discussion included differentiating between unexcused and excused absences and missing consecutive versus non-consecutive meetings, and checking in with members that miss meetings.

*It was decided that the CAG could vote to remove a member that misses three consecutive meetings.*

### **Record of meetings (decisions, note taking and tracking attendance)**

*Attendance will be tracked through the meeting notes and sign in sheets from the meetings.*

**Note taking:** Generally speaking the Secretary from the Executive Committee is responsible for note taking. However, given the discussion and decision to not have “assigned roles” for Executive Committee Members, it may be best to simply state that *the Executive Committee will assure that notes are taken at each meeting either by an executive committee member or by another CAG member.*

**Decisions:** *Meeting notes shall include decisions made along with a summary of the discussion and rationale or justification related to those decisions. Meeting notes shall also list all members in attendance, and summary of all agenda items, including presentations, requests for information, and public comments.*

**Clarification on Decision-making:** The proposed operational procedure for making decisions stated in Meeting One notes was “for a decision to pass, 2/3 of the members who are present physically or via phone or webinar must support the proposal or motion.” Furthermore, there must be a quorum (i.e., at least 11 members in attendance) to make decisions. Meetings can be conducted with less than a quorum but no motions can be voted on.

### ***DRAFT Mission Statement***

*The Bonita Peak CAG serves as an informational conduit between diverse community interests and U.S. EPA and its governmental partners with regard to activities at the Bonita Peak Mining District Superfund Site and their effects on the Animas River watershed within the State of Colorado. In its advisory capacity, the CAG will support overall Site goals and mine remediation projects that are: protective of human health and the environment, feasible and practicable, conducted expeditiously and efficiently, and mindful of community cultural, social and economic interests.*

#### **Comments on the Draft Mission statement included:**

- Concern was expressed about the words, “the CAG will support overall site goals,” in that it sounded like a rubber stamp approval. The following words were suggested to replace “the CAG will support overall site goals:” endorse, review, evaluate, analyze, provide recommendation, and prioritizing projects that give us the most bang for our buck.
- Also consider “taking into consideration mine remediation projects that are...” or “prioritizing mine remediation projects that are...”
- *By the end of the discussion CAG members expressed their support for using review, analyze and/or advise with the qualifier that describes the types of mine remediation projects.*
- Do overall site goals exist? There are some very general goals at this time. However, Mark Rudolph (CDPHE and member of the Bonita Peak Site Team) informed everyone that they will be coming out with some broad goals that parallel the Desired Conditions drafted the Citizen Superfund Workgroup.
- A member of the public suggested that the CAG set some of their own goals and pass those on to the EPA, as opposed to simply reviewing or analyzing the goals the EPA provides.

- Based on the definition of a CAG, our job is to provide community preferences for clean up and remediation; hence, we should tell them what our goals are.
- Another member of the public that has worked on Superfund projects cautioned the CAG to NOT be too specific and remain flexible. Other CAG members reiterated keeping the mission statement general so that we have flexibility.
- In the spirit of flexibility, it was suggested that once the CAG gets to making a decision, that it be used to test the mission statement, i.e., did the decision made reflect the mission statement? If not, then re-evaluate the mission statement at that time.
- Chara pointed out that mission statements ideally involve one sentence of what we do and a second statement about our vision. She suggested that the statement delete the “support EPA” part and modify sentence to reflect our vision.

Based on this feedback, Chara and Peter will revise the mission statement and distribute it prior to the next meeting. CAG members are encouraged to review the revised statement and even provide any suggested edits to Peter prior to the next meeting. By doing so, we might be able to provide the options in writing and expedite the conversation at the next meeting.

### **BTAG Meeting and EPAs Planned Document Releases for 2019**

The Biological and Technical Assistance Group or BTAG consists of agency representatives and other stakeholders such as, the EPA, FS, BLM, Southern Ute Indian Tribe, CDPHE, Trout Unlimited and Sunnyside Gold Corporation. They meet twice per year to review existing conditions and develop biological resource goals for specific river segments. Their next meeting is March 12, 2019; these meetings are not open to the public. However, one CAG member serves on the BTAG, Ty Churchwell, and he will share information between the two groups.

Anthony noted that there are many reports slated to come out this year and thus the CAG will have lots of information to consider. These reports include:

- Multi-Source Interim Record of Decision
- Aquatic Baseline Ecological Risk Assessment
- Human Health Risk Assessment
- Terrestrial Baseline Ecological Risk Assessment
- Sludge Stabilization Report (Kittimac Interim Sludge Management Location)
- 2018 Mayflower Investigation Report (Sunnyside Gold)
- 2018 Sampling and Analysis Report
- 2019 Sampling Analysis Plan
- Data Gaps Analysis

BLM and FS may also have other reports to release.

## **Presentation and Discussion of the Interim Remedial Action Plan**

Peter Butler, ARSG, gave a brief presentation about the Interim Remedial Action Plan (IRAP) that the EPA proposed last summer and put out for public comment. Peter's presentation gave a brief overview of the four interim action alternatives proposed in the IRAP, which are estimated to cost 8 million dollars (the fifth alternative involves three projects related to human health as opposed to environmental benefit and was not discussed), and ARSG's concerns or critiques of it, as expressed in their written comments, including:

- The plan did not estimate or address what the expected benefits from the actions would be; e.g., what would the change in water quality be; or how would the action affect aquatic life??
- The IRAP did not include any cost prioritization of site actions. Some of these sites are difficult to get to and some are easy, but without having the costs per site there is no way to prioritize sites. And without knowing the anticipated benefits to be gained, you cannot evaluate whether the cost is worth the benefit.
- Marcel said that the IRAP did include a reference to performance monitoring but there were no specifics or allocated funding for this potential work. Concern was expressed that there isn't baseline data available to judge performance after actions have been taken.
- Terry asked if the 60 sites that had remedial work done by Sunnyside and ARSG (as well as some by FS and BLM) over the past 25 years had been monitored for benefits? Not specifically, but estimates of load reductions were made for many of the projects and monitoring downstream at the four gages around Silverton show improvements for whole sets of remediation projects within each sub-basin.
- There was also no comparison as to how spending \$8m on other projects in basin may or may not produce larger benefits.
- Jenna asked if the final IRAP will be respond to the public comments on the Draft? Not known. EPA will probably have an Interim Record of Decision (ROD) with public comment but not sure. They usually do a mix of specific and general answers.
- Can the public comment on the Final IRAP? This seems unlikely; however, Peter thought that the CAG could comment regardless if desired.
- Charlie asks if this IRAP will contribute to what final clean up of site may look at? Mark Rudolph responded that this is only an interim Plan. He anticipates that benefits would be identified in the Final clean up plan, as opposed to this IRAP. He also added that the EPA wants to get the Final IRAP out and start work.
- Despite these critiques, Peter does not see negative impacts resulting from the IRAP. Rather, the point is that it is hard to assess whether these actions are the best use of resources, given the cost and lack of prioritization or estimates of benefits.

## **Requests for Information and Other Comments**

- Mark Rudolph was asked if he could coordinate having someone from the Bonita Peak Site Team give an overview and update on the Baseline Ecological Risk Assessment (BERA).
- Mark Rudolph was also asked to convey to the EPA that the CAG would like to see Shannon compensated for facilitating the CAG Meetings. Anthony then asked the CAG for a vote to forward Shannon's bid to the EPA to initiate the contract process. The CAG voted and all voted in favor.

**Next Meeting:** March 28, 2019 from 3 PM to 6 PM at the Silverton Town Hall. Terry volunteered to bring refreshments for the meeting.