

Special Meeting Agenda  
 Scenic Rivers Joint Study Committee  
 December 2, 2013  
 10:00  
 Tulsa Tech Riverside Campus  
 801 East 91st Street  
 Room A-144  
 Tulsa, OK

Meeting start time 10:00

Members Present:

Arkansas Representatives	Oklahoma Representatives
Brian Haggard (HAGGARD)	Shellie Chard-McClary (CHARD-MCCLARY)
Marty Matlock (MATLOCK)	Shannon Phillips (PHILLIPS)
Thad Scott (SCOTT)	Derek Smithee (SMITHEE)

I.

- 10:00 Call to Order by HAGGARD, Committee Co-Chair
- Committee briefly introduced themselves for the benefit of the audience - all members present
- Audience introduced themselves and the sign in sheet from the meeting will be attached to the final/approved minutes
- CHARD-MCCLARY presented the minutes from the October 29, 2012 meeting. The minutes were provided to the committee for review prior to the meeting. There were no requested changes.
- **MOTION 1: To approve minutes as presented**

Representative		Yes	No	Abstain	Absent
Shellie Chard-McClary		X			
Brian Haggard		X			
Marty Matlock		X			
Shannon Phillips	Second	X			
Thad Scott		X			
Derek Smithee	Motion	X			

- Approved minutes and sign in sheet were provided to PHILLIPS be scanned and uploaded to the website

II.

- PHILLIPS reported that the website is up and running. The site can be accessed at the bottom of OCC website home page or by using the following link:  
[http://www.ok.gov/conservation/Agency\\_Divisions/Water\\_Quality\\_Division/R\\_Joint\\_Study\\_Committee.html](http://www.ok.gov/conservation/Agency_Divisions/Water_Quality_Division/R_Joint_Study_Committee.html)
- PHILLIPS reported that all agendas, minutes, RFQs, etc. will be available on the site

### III.

- MATLOCK discussed that the procurement process commonly known as “design bid best value strategy” will be utilized.
- The committee will request proposals from those that are pre-approved based on their submission in response to the Request for Qualification (RFQ).
- MATLOCK reported that he worked with PHILLIPS to develop the draft of the RFQ and provided to the committee for review, comments, input, etc.
- It was reiterated that Parties will be automatically excluded from consideration are those that were involved with the Oklahoma lawsuit against the poultry industry and any facilities located in Arkansas or Oklahoma in order to avoid any appearance of impropriety.
- The RFQ will be distributed in advance to committee members who will distribute to known entities and the information will be placed on the website.
- It was determined that the committee would not answer clarification or technical questions but would simply refer to the website and the associated documents on the website including the RFQ, Joint Principles, etc. However, it was determined that if an entity had questions of an administrative nature, that CHARD-MCCLARY would be the point of contact. The RFQ will contain the email and telephone contact for CHARD-MCCLARY.
- It was agreed that CHARD-MCCLARY would receive all submittals and provide the submittals to the full committee. Additionally, CHARD-MCCLARY will maintain a tracking document that includes all committee contacts regarding the RFQ and associated submittals.
- It was agreed by the committee that once a proposal is submitted there will be other details that must be addressed.
- HAGGARD and SMITHEE said at some point there will be a need to discuss the budget of the study. The committee agreed that the budget will be required in the proposal but that there would be no increase in the \$600,000 outlined in the Second Joint Principles.
- MATLOCK asked if there were any questions from the audience
  - AUDIENCE – will the deadline remain December 20, 2013?
  - MATLOCK – Yes, due to schedules and holidays it is aggressive but the RFQ should be easy to pull together for qualified applicants
  - COMMITTEE – there was discussion of what about a delay until December 24, 26 or other dates. The committee determined that the deadline would be set at December 27<sup>th</sup> at 4:30pm. The submission must be time/date stamped no later than the established deadline for consideration.
  
  - AUDIENCE – what is the website?
  - PHILLIPS stated it will be provided to those in attendance  
[http://www.ok.gov/conservation/Agency\\_Divisions/Water\\_Quality\\_Division/IR\\_Joint\\_Study\\_Committee.html](http://www.ok.gov/conservation/Agency_Divisions/Water_Quality_Division/IR_Joint_Study_Committee.html)
  
  - AUDIENCE – will the committee consider hiring educational institutions?
  - MATLOCK - yes

- MATLOCK – the committee and those in attendance need to use their network to get the word out about the RFQ
- COMMITTEE – how should we choose who we notify? Everyone should work their networks to announce the RFQ and direct them to the website to get information
- SCOTT – should we discuss and agree on language to use in emails?
- COMMITTEE – no, we should just refer to website and specifically the Second Joint Principles and RFQ documents
- MATLOCK – Committee will need time to review the qualifications. Can we send to committee in advance of the January 6 meeting?
- CHARD-MCCLARY will provide electronic versions of all submittals
- SMITHEE – how do we do general notification?
- SCOTT – we could use sites like the Ecolog list serve, Society of Fresh Water Scientist ads; he will email them
- HAGGARD – there are others
- MATLOCK – each committee member should send to their known entities
- COMMITTEE – we don't want to miss a group or double up
- HAGGARD – maybe the committee should email each other with our contacts?
- SMITHEE – will contact Walter Dobbs
- HAGGARD will contact Ryan King
- COMMITTEE will email each other and CHARD-MCCLARY will maintain an inventory and share with the committee
- MATLOCK – we will go through the submission that we receive in the January 6 meeting. Committee member should expect a long day and should come prepared for in depth discussion
  
- **MOTION 2: To update RFQ to include: CHARD-MCCLARY as the point of contact for administrative questions; that technical questions will not be answered but applicants will be referred to the website [http://www.ok.gov/conservation/Agency\\_Divisions/Water\\_Quality\\_Division/IR\\_Joint\\_Study\\_Committee.html](http://www.ok.gov/conservation/Agency_Divisions/Water_Quality_Division/IR_Joint_Study_Committee.html) for clarification; the \$600,000 is the maximum, all inclusive budget; and all submittals must be received and time and date stamped by the deadline of 4:30 pm December 27, 2013.**

Representative		Yes	No	Abstain	Absent
Shellie Chard-McClary		X			
Brian Haggard		X			
Marty Matlock	Motion	X			
Shannon Phillips		X			
Thad Scott	Second	X			
Derek Smithee		X			

IV.

- CHARD-MCCLARY – provided an update on the email from Randy Young. (Email will be attached to approved minutes)
- The email stated that:
  - JD Strong would approve expenditures for Oklahoma and Randy Young would approve expenditures for Arkansas.

- There would be no specific procurement rules that would apply to this process.
- He would like to see a budget be adopted and submitted to him and JD.
- Commitments have been made to fund the Study (\$600,000). Funding on Deposit is \$200,000. Checks have been cut for another \$185,000 and \$30,000. He expects to reach \$500,000 by early December and the remaining \$100,000 will be disbursed from a private Foundation at that time and must occur before the end of December.
- MATLOCK – committee should do a memo to say cost of contract is \$600K and the contract will have a detailed breakdown
- COMMITTEE – agreed that was a reasonable request **and MATLOCK agreed to draft;**
- COMMITTEE – agreed that the contractor will send invoices to CHARD-MCCLARY who will send to JD Strong and Randy Young; the payment will go to contractor
- COMMITTEE – we will negotiate contract to state what is required and how frequently money can be disbursed; it is hoped that the committee Secretary can authorize payments that meet the approved budget in the contract without having a full committee meeting each time

V.

- MATLOCK – it is critically important to include input from the audience for this next part of the discussion
- HAGGARD - they will be allowed to ask questions or provide comments as they come up; this will be very informal
- SCOTT - went thru EPA guidance doc and Joint Principles documents to look at methodology. He came up with four areas for committee discussion
- **What is Statistically Acceptable and Significance?**
  - SCOTT – In looking at stressor response, the EPA document talks about half a dozen methods that range from simple correlation to non-parametric; it is important to note that the answer to this question will depend on the scientific method that is chosen
  - SMITHEE and MATLOCK – the language in the Joint Principles documents were not designed by scientists for science but is a negotiated product; at some point committee will have to decide the answer to this question; there have been many discussions in the past; we need to focus on being able to measure the change
  - CHARD-MCCLARY and MATLOCK – this question need to be answered by the contractor as it relates to the science part; the contractor can/should make recommendations as part of their proposal but the challenges lies in the management decision about what is acceptable; the management decisions are generally easier to deal with then the decision that must be made related to the real data and what it means
  - HAGGARD - scientists generally make decisions as they go. We need to decide if it is important to discuss upfront. Some factors to make the decision will include the specific sites studied, etc.
  - SCOTT – we need to step back to address the question of “what are the expectations we have for the contractor?”

- COMMITTEE – what about an alpha value of 0.2? We can get better. When we talk about algal biomass - having a relatively high confidence compared species composition; 2010 guidance document is behind the times; it is the best available that we know of at this point; we can deviate as long it makes good sense and we can document the reason for the value chosen.
- AUDIENCE – if you broaden the study the cost will go up but if you narrow study too much it is not as good
- MATLOCK – Key questions are “What can we afford? What can we get done?”
- SCOTT - for \$600,000 we should not have anything less than a Cadillac version of the study
- SMITHEE – do we want 6 decent meals or 1 world class meal
- HAGGARD – we *have* to answer shift in algal species and biomass but *want* to understand system;
- COMMITTEE – we all understand the ecosystem concept but at this point we are trying to address P because that is why our committee was in the Joint Principles; we can't get caught up chasing ghosts; we need to manage the process carefully
- SCOTT – suggested that the analyses we expect may not take us where we expected to end up; we may go in with one idea and find something else; we need to have the scientist tell us and we need to review and determine appropriateness
- COMMITTEE – we have to answer two fundamental questions although we would like to answer others; we need to have a lot of confidence in the fundamental questions and less in the secondary ones
- PHILLIPS – Contractor may not be able to answer the questions until the study is completed; we should expect them to provide other questions to us in the selection process; **we need to give specific questions/concerns to contractor applicants; we will do in Jan meeting**
- **Define Amount of shift in Algal Species as Significant**
  - SMITHEE - because of the Scenic River designation in WQS these are “Miss American” or best of the best water bodies; he doesn't want to see shift in the rivers where there would be green algae growing on all rocks, etc. since this is not the case today
  - SCOTT – we need to use the tributaries in watershed that have various land uses so we can see changes; we can't bring the water bodies back to a state they are not in today; we can't go back in time but we can improve current condition to get as close as back as we can. Waterbodies that are similar or are in similar basins that have less development, etc. can be used to give us a base line.
  - SCOTT – We need to decide if we are talking about diatom or nuisance species? Have we defined shift? The EPA reference document requires shift among somewhat independent samples. There are some ways to do synthetic but is it costly.
  - COMMITTEE - What is the shift in community thresholds? That is really a management decision. The limited shift in diatom but shift in nuisance species is a problem.

- SMITHEE – any increase in "fuzzies" is out; filamentous = fuzzie; limited diatom may be OK unless there are other increases seen
- SCOTT – defining a difference in algal mass or species composition may be difficult; we will not have the actual data for these water bodies
- PHILLIPS – the contractor should bring us options on how to determine shifts and then we would decide. We have to ask do we have capacity to find streams that have minimal impact, this is why we talked about adding Lee Creek and Little Lee Creek; she is hoping researchers would give us an idea of how they would define what shift is
- HAGGARD – did not want the committee to get hung up on the word "shift"; he views this as a change in filamentous with change of Phosphorus
- SMITHEE – he is not sure since this is a Scenic River that is impacted
- AUDIENCE – when talking about shift is that part with the "undesirable" conversation?
- COMMITTEE – yes, all are inter related
- SCOTT – what are you describing? Is threshold value for undesirable filamentous bacteria are one value in one waterbody but in another waterbody it is different?
- SMITHEE – yes – for the Illinois River the P limit is 0.037 but Barron Fork is something else, Little Lee Creek is something else; the standard is that it can't let water get worse over time - anti-degradation is the standard – the use can't be impaired; the floor different place; there are higher expectation for Scenic Rivers; scientifically each segments could have different values but too hard for management so a number is selected for all Scenic Rivers which is rarely the most stringent
- SCOTT – in the execution of the study - the samples from Barron Fork and other waterbodies would inform a single threshold for a single number in order to construct charts; secondary factors come into play; the threshold is the value where shift occurs this is statistically significant and acceptable level

BREAK FOR LUNCH 11:25

RECONVENE 12:12

- **Shift in Species and Compositions**
  - MATLOCK and All – we need to talk about all of the issues all together; we need to address biological volume; do we need to identify individual species? do we need to talk about Genus, Species or Functional Group (green, blue-green, etc.)
  - MATLOCK – if there is a red tide situation that is a clear indication of a problem but what about invasive species?
  - COMMITTEE – there are species (red flags), we need to be watching for them; some are brought in but we need to focus on those that bloom /thrive in high P conditions; seasonality is a key issue that must be taken into account; some bloom only as temps increases; have to look at Species composition - not species per se but by groups like toxin producers, filamentous, etc. We would be interested to see data

on broad phylogenetic large scientific groups and specific information on indicator groups; we need to look at what happens when P is added to the stream; we need to collect data to assist ADEQ to establish their WQS; single cause in primary production could be missed if the sampling coincided with another issue; an academic institution will collect information about primary consumers/grazers (snails, fish) which will also give good indications of what is happening in the waterbody (algae is down but grazers are thriving is a potential indicator of problems)

- SMITHEE – we fall off the wagon when we compromise science in order to get AR WQS rule promulgated
- COMMITTEE – this becomes another secondary factor like hydrology, etc. that is important but not a primary reason the committee was formed.

- **Define Shift in Algal Biomass Production**

- HAGGARD and COMMITTEE– we need to talk about the specific end points and recognize that we are really talking about chlorophyll A; although it is not accumulation but production; chlorophyll-A is the standard and is understandable; accumulation does tell what is happening at that point; the reference document talks about the conditions in the water body over time; is there a problem only when grazing is not happening?
- SMITHEE – no because we are trying to avoid shift from nature.
- MATLOCK – can it really be measured;
- SMITHEE and PHILLIPS – no; this is hard; change in composition is bad and change in amount is bad; this is an example of the “woman who swallowed a fly” or “if you give a mouse a cookie” analogy
- COMMITTEE – We have to strike a balance; what did we agree on? increase productivity in biomass even if the end result is OK is not acceptable
- HAGGARD – this is totally different study.
- PHILLIPS – doesn't undesirable aesthetic address this based on the language in the Joint Principles documents?
- Committee – are we talking about algal biomass or total biomass
- SMITHEE – increases in algal biomass can be masked by grazing, etc.; there can be a shift that is missed; Production rate free you a little; rate is not approach that has been written about in reference document; standing stock is in reference document; may need to "pioneer" a new approach
- SMITHEE – opinion that if we say that increases in biomass is OK or is good then the committee has fallen off the wagon
- SCOTT – the variable of consumer biomass is a secondary variable; it is just one other variable like grazer concentration, hydrology, etc.;
- SMITHEE – we can't just add additional stone rollers, etc.; we don't want to get to a point where high production is OK because it is well controlled; this leads to issues of “did you restock fish for lower cost rather than meeting a permit limit”

- MATLOCK – if biomass increase isn't bad it is bad when the ecosystem changes if it goes up but doesn't bounce back due to natural conditions
- PHILLIPS – Scenic Rivers have to avoid getting close to the bad points
- HAGGARD – summary so far...interested in species broad phylogenetic groups; biomass is chlorophyll – A per unit; literature says number is 100-150 mg chlorophyll-A/meter squared (Welch and Biggs)
- SMITHEE - didn't think this was applicable necessarily to prairie streams but was good for Pacific NE and Sweden (basis for study)
- SCOTT – depending what data shows and the method used it may all work itself out
- SMITHEE – does not want to pay for a social acceptability study. All agree. Red herring that we will not go down that path
- SCOTT – we have define undesirable
- AUDIENCE – the committee has tried to answer the questions in wrong order. Social part is large mouth bass over small mouth bass, etc. That seems difficult to get to the end point based on parameters. TMDL meeting talked about chemical composition no biomass. This is a dynamic system. If we don't answer invertebrates then we don't really know anything. We need to include all the other variables. The ecosystem has fundamentally changed since the 1960s. Indicator species are higher in certain areas under certain conditions; this has to be dynamic.
- SMITHEE – all agree in theory. However, the poker hand we are dealt is a pair of 2s. We have to play hand we are dealt. We have to use what we have like chemical limits in permits.
- AUDIENCE – why are we not working on TMDL
- SMITHEE – agrees; we should all be working on TMDL implementation
- AUDIENCE – this is just on number
- ALL – this will drive the TMDL; is the 0.037 the correct number? we were given 2nd Joint Principles document to deal with this study with P, algae, etc.; trophic levels at hand of P and algae; we have to answer the questions and do as much with the secondary issues as best we can
- MATLOCK – this is potentially the first step; once this is resolved with a number, then we look at the other issues; we need to agree on the number then start working on other issues
- AUDIENCE – this is just one component; have to articulate to public, states, politicians, etc.
- SMITHEE - P is a master variable and this is where we have to start with EPA influence, WQS, etc.
- ALL - Do we want to be able to see the bottom of the river? We need some transparency; all forms of algae needs to be included; River visitors think it is better when you can see to bottom, it looks better; Lake Francis is problem but can't be addressed in this study
- AUDIENCE – aesthetics seems totally subjective; how do you give the phrase meeting?

- COMMITTEE – we really don't; we are looking for a tipping point and are looking for the range for what is decent WQ to not good WQ; aesthetics is in the WQS and in the CWA;
  - AUDIENCE – why is there no study involving public opinion
  - MATLOCK – you learn more about the people rather than the water body (questions are answered: I feel this way because I lived here 50 years and know what it used to be then verses now)
  - SCOTT – nuisance language is below the OK standards
  - SMITHEE – perception response from people takes more to see than just what happens from a scientific standard
  - ALL – chemical, physical and biological properties; we have to maintain the entire aquatic systems
- **What is Undesirable Aesthetic or Water-Quality Conditions?**
    - HAGGARD – W Q is physical, chemical and biological; we have to balance; we have to also consider cost, data, etc.
    - SMITHEE – we need to talk about P since that is what we can control and that is what Joint Principles document calls for
    - SCOTT – If/when we develop a P number, what water bodies would it apply and under what water body conditions? If sampling occurs at base flow conditions what do we protect only base flow?
    - SMITHEE and SCOTT – if you are putting in a standard you need implementation of the standards; Illinois River impairments are made on samples collection and 30 day geometric mean; EPA recommends 30 day mean; need to talk about seasonal implementation, etc. If there is a model we need to put in the value to get a good result; this makes it harder but it is really the only way to do it. Geological sequestration over time is real world. There are some difficult issues related that we can get overwhelmed. One way to address in study, collect chemical samples around the time of the biological samples.
    - PHILLIPS – can data collected in OK by OK entities be used in the study?
    - ALL – yes; as long as data is QA/QC, etc. We don't want to blindfold our guide by limiting their access to information
    - MATLOCK and SMITHEE – we have a disagreement - WQS are clear on what is bad but what the OK delegation says is bad is more detailed and explained what we view as bad; enabling act does not articulate in details what the aesthetic use looks like; our boundary is the Joint Principles language is plus or minus 0.01
- HAGGARD – Any other question or comments from the committee?
  - COMMITTEE – No
  - HAGGARD – Any other question or comments from the audience?
  - AUDIENCE – No
- COMMITTEE – The next meeting will be January 6, 2013 at 9:00 am somewhere in Tulsa. The exact location will be announced as soon as it is known.
- **MOTION 3: To adjourn the meeting**

Representative		Yes	No	Abstain	Absent
Shellie Chard-McClary		X			
Brian Haggard		X			
Marty Matlock		X			
Shannon Phillips	Motion	X			
Thad Scott		X			
Derek Smithee	Second	X			

- Meeting adjourned 1:18 pm

Seneca Rivers Joint Study Committee  
Dec. 2, 2013 10:00 AM

	<u>Name</u>	<u>Group/Org.</u>	<u>E-mail</u>
1	Heath Ward	L.W.G. and Springdale Water Utilities	hward@springdalewater.com
2	PAT GWIN	CHEROKEE NATION	pgwin@cherokee.org
3	TOM ELKUS	Cherokee Nation	tom-elkus@cherokee.org
4	K.C. Tucker	Bassett Law Firm	ktucker@bassettlawfirm.com
5	Chris Soller	AR. Natural Resources Comm	Chris.Soller@Arkansas.gov
6	Sam Hill	CN	sara-hill@cherokee.org
7	Kendra Jones	AR. AG	kendra.jones@arkansasag.gov
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			



## Chard-McClary, Shellie

---

**From:** Randy Young <Randy.Young@arkansas.gov>  
**Sent:** Tuesday, November 19, 2013 12:03 PM  
**To:** Chard-McClary, Shellie  
**Cc:** J. D. Strong; derricksmithe@owrb.ok.gov; Brian Haggard  
**Subject:** RE: Responding to your email to Laura Brown regarding status of funding for the joint S-R Study on the Illinois River

No, I do think the JSMT should adopt a budget with sufficient detail so that JD and I will have some basis for approving invoices. R

Randy Young, P.E.  
Executive Director  
ANRC and AWWCC  
[randy.young@arkansas.gov](mailto:randy.young@arkansas.gov)  
Office 501 682 3961  
Cell 501 940 0429

----- Original message -----

From: "Chard-McClary, Shellie" <[Shellie.Chard-McClary@deq.ok.gov](mailto:Shellie.Chard-McClary@deq.ok.gov)>  
Date: 11/19/2013 11:41 AM (GMT-06:00)  
To: Randy Young <[Randy.Young@arkansas.gov](mailto:Randy.Young@arkansas.gov)>  
Cc: Laura Brown <[Laura.Brown@arkansas.gov](mailto:Laura.Brown@arkansas.gov)>, "Strong, J.D. ([jdstrong@owrb.ok.gov](mailto:jdstrong@owrb.ok.gov))" <[jdstrong@owrb.ok.gov](mailto:jdstrong@owrb.ok.gov)>, Brian Haggard <[haggard@uark.edu](mailto:haggard@uark.edu)>, DRSMITHEE@owrb.ok.gov  
Subject: Re: Responding to your email to Laura Brown regarding status of funding for the joint S-R Study on the Illinois River

Is there any particular form/format you need us to use?

Thanks  
Shellie

sent by Shellie's iPad

On Nov 19, 2013, at 9:23 AM, "Randy Young" <[Randy.Young@arkansas.gov](mailto:Randy.Young@arkansas.gov)<<mailto:Randy.Young@arkansas.gov>>>>  
wrote:

Shellie,  
Commitments have been made to fund the Study (\$600,000). Funding on Deposit is \$200,000. Checks have been cut for another \$185,000 and \$30,000 and should be deposited this week. I expect to reach \$500,000 by early December and the remaining \$100,000 will be disbursed from a private Foundation at that time and must occur before the end of December. The process for payments from the fund were agreed upon by the Ar-Ok Arkansas River Compact Commission at their meeting on September 26th. The Joint Study Management Team should submit invoices for payment to me and once approved by me and J. D. Strong will be paid by Laura Brown from the fund being held by the Compact Commission. R



Randy Young, P.E.  
Executive Director  
Arkansas Natural Resources Commission  
Cell 501-940-0429  
Work 501-682-3961

