

Rocky Flats Stewardship Council Board Meeting Minutes
Monday, March 6, 2006
9:15 a.m. – 11:30 a.m.
Jefferson County Airport, Broomfield

Board members in attendance: Shaun McGrath (Director, City of Boulder), Jennifer Bray (Alternate, City of Boulder), Lori Cox (Director, Broomfield), Mike Bartleson (Alternate, Broomfield), Jo Ann Price (Director, Westminster), Ron Hellbusch (Alternate, Westminster), Lorraine Anderson (Director, Arvada), Clark Johnson (Alternate, Arvada), Jim Congrove (Director, Jefferson County), Kate Newman (Alternate, Jefferson County), Karen Imbierowicz (Director, Superior), Bob Nelson (Alternate, City of Golden), Shari Paiz (Director, City of Northglenn), Shelley Stanley (Alternate, City of Northglenn), Ken Foelske, Jeanette Hillery (Director, League of Women Voters), Marjory Beal (Alternate, League of Women Voters), Kim Grant (Director, Rocky Flats Cold War Museum), Roman Kohler (Director, Rocky Flats Homesteaders).

Stewardship Council staff members and consultants in attendance: David Abelson (Executive Director), Rik Getty (Technical Program Manager), Barb Vander Wall (Seter & Vander Wall, P.C.), Erin Rogers (consultant).

Members of the Public: Representative Mark Udall, John Rampe (DOE), Bob Darr (DOE), Marion Galant (CDPHE), Carl Spreng (CDPHE), Rob Henneke (EPA), Susan Vaughan (League of Women Voters), Jane Greenfield (City of Westminster), Mark Sattleberg (USFWS), Frazer Lockhart (DOE), Patricia Rice (RFCAB), David Hiller (Senator Salazar), Jennifer Bohn (Stewardship Council accountant), Tony Carter (DOE-LM), David Geiser (DOE-LM), Doug Hansen (Stoller), Mark Aguilar (EPA), David Krucek (CDPHE), Hank Stovall (citizen), Dan Miller (Co. Attorney General's Office), Doug Young (Rep. Udall), Al Nelson (City of Westminster), Jeanette Alberg (Sen. Allard), Todd Neff (Daily Camera).

Convene/Agenda Review

Rocky Flats Coalition of Local Governments Chair Shaun McGrath convened the meeting at 9:00 a.m. He noted that the first order of business was to elect officers for the Stewardship Council.

Election of Officers

Karen Imbierowicz moved to nominate Lorraine Anderson as Chair. The motion was seconded by Jeannette Hillery. The motion passed 11-0 (Boulder County was not in attendance).

Lorraine Anderson took over as Chair.

Shaun McGrath moved to nominate Karen Imbierowicz as Vice Chair. The motion was seconded by Jeannette Hillery. The motion passed 11-0 (Boulder County was not in attendance).

Karen Imbierowicz moved to nominate Jeannette Hillery as Secretary/Treasurer. The motion was seconded by Jim Congrove. The motion passed 11-0 (Boulder County was not in attendance).

Recognition of Transition from Coalition to Stewardship Council

David Abelson introduced Jennifer Bohn (accountant) and Barb Vander Wall (attorney) and recognized the great job they did during the transition from the Coalition to the Stewardship Council.

Lorraine Anderson invited Jeanette Alberg from Senator Allard's office and David Hiller from Senator Salazar's office to address the Stewardship Council.

David Hiller announced Senator Salazar will be reading a statement on the floor of the Senate this week recognizing the Coalition for its service, mission, and accomplishments. David read the letter which included commendations for the Coalition's devoted advocacy and success working together, and added his sincere thanks and congratulations.

Jeanette Alberg noted that while Senator Allard could not be here in person he wrote a formal letter of commendation which she read to the group. In the letter, Senator Allard celebrates the past and future of Rocky Flats and thanks citizens groups for providing much-needed insight, which was instrumental to cleanup. He also noted that he has worked to ensure funding for the post-closure work of the Stewardship Council.

Lorraine offered her thanks to both Senators on behalf of the organization. She then invited Representative Mark Udall to speak.

Representative Udall began by noting the spirit of excitement regarding the cleanup accomplishments at Rocky Flats. He said when he visited site last fall, his jaw dropped when he saw the changes. Rep. Udall heard that Rep. Beauprez wanted to visit the site the next day, so he decided to go again to see the look on his face. He noted that the Stewardship Council will continue the role of oversight. He said "thank you" to the Coalition and noted that there is tremendous interest in Washington, D.C. about what was done here and how it was done. He noted that it is also important to keep our commitments to other sites in the complex and ensure funding. Additionally, he stated how important it is for him to work on behalf of former Rocky Flats workers because Congress is not getting the job done now. He believes it would be immoral to not process medical claims from the nuclear workers. In summary, he said he was not saying goodbye, but thinks we should really celebrate and work together on other challenges. He reflected that if we can accomplish what we did at Rocky Flats, citizens can certainly work on other important issues facing Colorado.

Lorraine next introduced Dave Geiser from the Department of Energy's Office of Legacy Management (LM). Dave said he was here on behalf of Mike Owen, Director of LM. DOE-LM is currently responsible for 70 sites, and that number will grow to 90 sites in 37 states within the next 18 months. Rocky Flats is the biggest and most important of these sites. LM will take formal control of Rocky Flats in October, 2006. He also offered his congratulations to the Coalition on a job well done. He added that he looks forward to working with the Stewardship Council, and continuing a good working relationship.

Business Items

Before considering motions, David Abelson noted that the way the Stewardship Council will function as an organization may not be exactly like each government conducts its own business. Questions arose within the Coalition when new members were not comfortable operating differently than their own government. David suggested that as the Council moves forward it will be the responsibility of the members to create the systems for this new organization.

Oath of Office - Barb Vander Wall distributed an oath to the directors for signature. She forgot to bring the forms for the non-elected members, and will distribute them after the meeting. She explained that the oath simply identifies that one is serving as a member and agrees to uphold the laws of state. The members need to sign the form, have the person next to them witness it, and return them to her. She also noted that she still needs a formal declaration of members from Golden.

Resolution Accepting the Coalition's Assignment of Rights, Obligations and Liabilities - Lori Cox moved to approve the Resolution. The motion was seconded by Karen Imbierowicz. The motion passed 11-0 (Boulder County was not in attendance).

Resolution Indemnifying Stewardship Council Board - Barb introduced the Resolution, noting that this resolution will renew itself annually, based on Colorado state statute. Roman Kohler moved to approve the Resolution. The motion was seconded by Karen Imbierowicz. The motion passed 11-0 (Boulder County was not in attendance).

Stewardship Council Bylaws - David Abelson explained that the Coalition developed draft bylaws in order to help the Stewardship Council get started. The version included in the Board packets includes changes suggested by Coalition members at the last meeting. In cases where staff was directed to develop proposed language, it is redlined. If the Coalition agreed on language, it was incorporated into the document. David then reviewed several issues that are addressed in the bylaws:

- Member contributions – The Coalition agreed that annual dues were only appropriate for governmental members.
- In the bylaws, the term ‘party’ refers to local government representatives; ‘member’ refers to the non-governmental representatives
- A section was added about the application process, and a provision for re-application. The group did not want to define a basis for selecting members now, so they left it open to re-application.
- Number of votes to pass a motion – Westminster’s attorney noted that since the IGA says 9 votes are required for an affirmative action, the bylaws must also say 9, instead of the $\frac{3}{4}$ that had been in an earlier draft.
- Identification of ex-officio members – The Coalition wanted to distinguish the rotating parties (Northglenn/Golden) from agency ex-officio members. Therefore, language was added that allows the Council to select ex-officios from DOE, CDPHE, EPA and DOI.
- Board vacancies (page 2) – Needed to add death. On page 3, they added criteria for removal.

- Process for the Council to take action – Barb and David received a memo from Westminster asking if a formal resolution will always be needed, or if this could be more flexible. The Coalition thought there should be flexibility.
- Executive session – According to Colorado law, a group needs 2/3 of the quorum present to enter into executive session. But, in order to take action, the Council will still need 9 votes to approve something when they come out.
- The Council will also need to address the issue of notices of meetings. This will be discussed later in the meeting.

Jane Greenfield (Westminster) noted that David did a good job describing what constitutes an action of the Board. She asked if the two-year term referenced in the bylaws reconciles with the language of the IGA. David said the Council will address that in future.

Shari Paiz asked if the City of Northglenn will be required to pay dues when it is not a voting member. David said the rotating parties will only pay dues in years they have voting rights. Shari also asked if absences will count against a Director if there is an alternate at the meeting. David responded that the group has not discussed that particular issue. Clark Johnson noted that, as it is written, if an alternate is in attendance, the director is not absent. Barb Vander Wall noted that the real issue is ‘unexcused’ absences. Lorraine Anderson said this was just needed in order to prevent abuse, because if someone does not attend regularly, they should not be a member. Karen asked by what process an absence could be excused. Barb said that Board deliberation is required to classify an absence as unexcused. Therefore, all absences will be considered excused until the Board takes an action to declare them unexcused. Shaun asked if this policy treats directors and members equally. Barb clarified that all members of the Stewardship Council are directors.

Shaun then asked if this process meshes with the IGA, in the case of the Board potentially removing a signatory. Barb responded that this would result in removing an individual member, not the party. Shaun brought up the question of what would happen if the Board removed a non-elected member. Barb said that she would interpret it to mean that the individual, and not the entity they represent, would be removed and could be replaced. If they do represent an organization, that organization could replace them. Shaun stated that he would rather allow that organization to re-apply along with others and then the Board could decide if they want the designated replacement. David noted that the IGA states that organizations are selected as organizations and can select their representatives. However, he acknowledged that the Board might not be happy with this if there are problems in the future. Jeannette noted that organizations may be replaced when their term is up, and would also hope that groups will take their role seriously and attend. Shaun concluded by agreeing to see how it goes and re-address this issue in the future. Lorraine noted that the Council can always change its bylaws if issues arise

Ken Foelske asked if Board meeting minutes are kept in perpetuity, and noted that under Colorado law Executive Session minutes are only required to be kept for 90 days. Barb Vander Wall responded that Executive Session minutes are not public record and she recommends keeping them only as long as the law requires.

Jeannette Hillery asked if the reference to $\frac{3}{4}$ for voting was going to be replaced by nine. David said it was. He added that the group could leave the quorum at $\frac{3}{4}$, but it would be easier to keep 9 for everything.

Shaun McGrath remarked that the ex-officio list is very specific, and suggested broadening it to read: "...from Federal and State agencies, including..." Shaun moved to make this change. The motion was seconded by Lori Cox. The motion passed 11-0 (Boulder County was not in attendance).

Kim Grant asked if this was the same ex-officio language as found in the Coalition's bylaws. David said that the Board decided in 2003 that ex-officio members could be former Board members, and that this language is more specific than the Coalition bylaws.

Shaun McGrath moved to approve the bylaws. The motion was seconded by Lori Cox. Karen Imbierowicz asked for review of the proposed amendments. Barb said the ex-officio language would be changed. David said that $\frac{3}{4}$ would be changed to 9 votes, and the other redlined changes would be made. The motion passed 11-0 (Boulder County was not in attendance).

Discussion of Meeting Date, Time and Place -- Lorraine asked if anyone wanted to change the schedule that was being used by the Coalition. The new bylaws call for quarterly meetings, but it can be more often if the Board chooses. The staff recommends that the Council meet on May 1 and June 5. Karen Imbierowicz suggested that a subcommittee meet prior to the May 1 Council meeting to discuss staffing needs after July 31. The subcommittee can bring a recommendation to the May meeting for discussion. Lorraine said that they can discuss this later in when the Council reviews Updates/Big Picture. Barb Vander Wall advised the Council that they need to set a regular quarterly meeting schedule.

Lori Cox moved that Stewardship Council meet at 8:30 a.m. on the first Monday of each quarter (January, April, July, October). The motion was seconded by Jeannette Hillery. David said that he was trying to figure out how these meetings will best correspond with the quarterly DOE-LM meetings (March 21 is next one). He suggested that the Council may want to adjust its meetings to be scheduled the month (maybe 2-4 weeks) after LM's quarterly meeting. This would allow for fresher information and better timing, so he recommends leaving some flexibility around scheduling. Lorraine asked if the motion should be changed. David said to leave it as Lori suggested, but be open to changing meetings when needed. The motion failed 7-4.

Karen Imbierowicz moved to hold the meetings on the 1st Monday of the 2nd month of the quarter (February, May, August, November). The motion was seconded by Ken Foelske. Shaun asked those who opposed the original motion to share their concerns. Karen explained that January brings holiday issues, and there are also budget considerations, and July is middle of summer. The motion passed 11-0 (Boulder County was not in attendance).

Public Comment

None

Executive Director Report - David Abelson reported on the following items:

- The jury in the Cook case ruled in favor of the plaintiffs and awarded in excess of \$550 million. This case was filed in 1990 and centered on perceptions of offsite impacts on property values. State Rep. McKinley has been trying to leverage the Cook case to apply to onsite issues. The Coalition has stated that McKinley's bill needs to find a proper balance, and that the one he introduced last year distorted the level of risk. The Coalition favored providing objective information, rather than the warning that McKinley endorses.
- David participated in a panel discussion at the Waste Management conference last week. He reported that there were a great number of people at the conference, but only about 30 people at the session. He and other participants speculated that perhaps people think that the Rocky Flats story has already told. He thinks this is unfortunate given the lessons learned that can help other sites.
- David and Rik are working on developing information-sharing systems for the Stewardship Council. One of their first undertakings will be regular updates on Rocky Flats issues. They hope that the general headings/categories will not change, but that the information will be updated. David and Rik need feedback from members if they like this format or have suggested improvements. These will be sent electronically in PDF format.
- Staff will keep their same rfclog.org email addresses, as they determined it was unnecessary to change.
- Based on a suggestion by Lori Cox, Board packets are now being sent electronically for non-Board members. This system will save money on printing and postage.
- David will be distributing an initial draft of the Coalition history report by March 17. He will be looking for feedback. He noted that this has been a challenging project. He also encouraged everyone to submit their own reflections and experiences that can be added to report, including what was done right, what was done wrong and lessons learned. David has also asked for input from the Congressional representatives. The report is currently about 60 pages long, plus attachments.
- The Stewardship Council website is under development, but has been pushed back a bit due to the transition schedule. David expects the bulk of it to be up by March 17th. They are also looking at ways that the website can be used as a communication forum.

Briefing on Long-Term Stewardship at Rocky Flats

Dan Miller from the Colorado Attorney General's Office joined the Board to deliver a presentation on Long-Term Stewardship (LTS) at Rocky Flats. He apologized for not having copies of his presentation available and said he will email it to the Board after the meeting.

Dan identified five main aspects to LTS:

- Institutional controls – which are restrictions on use of land or water, and usually required in instances of residual contamination, or when structures are necessary to maintain a remedy.
- Information management.
- Monitoring – to ensure remedy is performing as intended.
- Periodic re-evaluation of remedy – to ensure the remedy is meeting the objectives, and review if new technologies are available.
- Research and development.

The legal framework for stewardship at Rocky Flats governed by CERCLA, RCRA (and the corresponding Colorado Hazardous Waste Act) and the Colorado Environmental Covenant Statute.

CERCLA addresses stewardship in a number of ways. There is a statutory provision for a 5-year review in order to evaluate how the remedy is working. One of these reviews has already been done at Rocky Flats, and another is coming up soon. CERCLA expresses a preference that institutional controls are not the primary remedy. It borrows cleanup standards from other state/federal environmental laws, which it calls ARAR's, or applicable and relevant and appropriate regulations. At Rocky Flats, preliminary ARARs have been identified, including the NRC decommissioning rule, post-closure RCRA requirements, and various monitoring and maintenance requirements. CERCLA also contains information management requirements.

RCRA and the corresponding Colorado Hazardous Waste Act include requirements for long-term care at hazardous waste sites. The post-closure plan for the present landfill is currently out for comment and the State is also reviewing the plan. RCRA requirements are independently enforceable by the State.

Colorado Environmental Covenants are various regulations that apply to Rocky Flats. The agencies are in the process of figuring out how to implement them through the development of a Rocky Flats Long Term Stewardship Plan. This will be a CERCLA agreement and also a Corrective Action Order under RCRA. This plan will contain enforceable LTS requirements for monitoring, information management, and related issues. The agencies will be working on this shortly.

The environmental covenant law requires that institutional controls be implemented for all sites that have residual contamination, or that have remedies that need to be maintained. This applies to final cleanup decisions. There is already a covenant for the present landfill. There will also be one for the rest of the site, which will be finalized after the site CAD/ROD.

In order to clarify legal issues, the State wrote the statute covenant and went beyond that to address practical concerns about how information regarding restrictions can be reliably passed on to appropriate parties. Dan brought up the example of the Love Canal contamination. Colorado has tried to address these issues by ensuring multiple stewards, and multiple enforcers (which can even be a third-party). The State must approve covenants. CDPHE maintains a registry of

all covenants created, modified, and terminated. Land records must also be updated and there are notice provisions. Owners must provide copies of the covenant to any lease-holders and must notify CDPHE prior to transfer of ownership, or before applying for building permits. A new owner would be able to perform additional cleanup and apply for a modification of the covenant.

Since land use is locally-controlled, good communication between environmental regulators and land use regulators is essential. The statute requires CDPHE to contact land use entities for changes in the covenant and vice versa. Hopefully this will keep awareness of issues alive.

The Rocky Flats Stewardship Agreement will be enforceable, but will not be finalized for months. Probably not much will change from what is currently in place. DOE is responsible for maintaining remedies, environmental media, erosion, institutional controls, and administrative records. Five-year reviews are done in concert with the regulators. DOE is also responsible for any necessary additional responses. The role of the State and EPA is oversight. This will be much scaled back from what it was when the site was conducting cleanup, but the agencies still have this responsibility. CDPHE will coordinate with local governments. Local governments need to be involved in working with state regulators to make sure zoning decisions are fully informed and in compliance with the environmental covenant.

Karen Imbierowicz asked if the Stewardship Council will be reviewing the post closure plan for present landfill. David said that Rik has been looking at the plan and that there was nothing they thought warranted bringing it to the Board level. The Coalition addressed most of the issues previously. Dan added that the main LTS issues in the landfill plan are maintenance of the cap and monitoring of the groundwater system downgradient, and that it is pretty straightforward at this point. Karen asked if this can be used as a model for how to oversee LTS for the site as a whole. David said yes and no. He said it would better to focus on the bigger picture. Staff has been planning for the May meeting to look at final regulatory documents. There is also a need to bring the new members up to speed.

Clark asked for an update on the CAD/ROD timeline. Dan said that all accelerated actions have been completed. Regulators and the public are reviewing the draft RI/FS which includes 3 main options - no action, institutional controls, or further cleanup. Next will be the Proposed Plan, also with a comment period. The CAD/ROD will come next. In terms of schedule, according to John Rampe, the final RI/FS is expected in May. This will be followed by the Proposed Plan in late May or early June. The agencies hope to issue the final CAD/ROD by this fall.

Lorraine asked if the Stewardship Council will be able to comment on the plan before it becomes final. Rik said there will be a 60-day comment period. Dan stated that public comment is part of criteria for evaluating the plan and emphasized that the plan can change in response to public comment,

Public Comment

Jeannette Alberg (Sen. Allard) distributed brochures for Senator Allard's "Capitol Conference" that will be held in Washington, D.C. in late spring.

Updates/Big Picture

Executive Director - David pointed out the need to develop a work plan for the Stewardship Council. He thinks it should be pretty straightforward, as it will be based on the approved LSO Plan. The Council also needs a budget. David will be submitting draft budget next week; initial review will take place at the May meeting with budget hearings scheduled for June. He is looking for a simplified approach to procurement policies, while still being compliant with grant requirements. The Council can take some time with this, as there is no rush to get these policies in place. The draft work plan and budget will be distributed within about a week.

Big Picture - There will be no April meeting. During this time, Rik will meet with new members and help bring them up to speed on issues.

May 1: Potential Business Items –

- Review Draft FY06 Budget and Work Plan
- Procurement Policies
- Begin Discussing Stewardship Council Staffing needs

Potential Briefing Items –

- DOE-EM Briefing on Final RI/FS and Draft Proposed Plan
- Discuss Access Restrictions with DOE/USFWS

June 5: Potential Business Items –

- Budget Hearings,
- Continue Discussion on Stewardship Council Staffing Needs,

Potential Briefing Items –

- Update on DOE-LM quarterly update,
- Post-Closure RFCA Negotiations including Post-Closure Monitoring and Maintenance Plan

For the draft budget, David anticipates overestimating due to uncertainties regarding staffing needs.

Jeannette Hillery suggested that a small group be formed to discuss staffing needs, which would also help the budget process. David agreed with this suggestion, but will have to work around a vacation he has scheduled. Lorraine suggested that the Executive Committee work on this, as well as anyone else that is interested. The committee will include the Executive Committee plus JoAnn Price, Lori Cox, and Jennifer Bray. David noted that ideally there will be a slight scheduling overlap with the existing staff and the new staff. The Board will need a fairly clear idea of staffing needs by the June 5 meeting in order for this to happen.

Member updates – Shaun is concerned about whether the Council will have to provide notice for the meeting to discuss staffing needs since there will be more than two elected officials in attendance. Barb Vander Wall stated that if there will be substantive policy discussions, there

should be public notice. Karen asked if this includes email discussions. Barb said it does. Shaun suggested posting it just to be safe and to make sure they are within legal guidelines. Lorraine suggested the Council start the process by asking members to provide input on budget/staffing needs to the Executive Committee, which could then develop a plan or outline. Jo Ann said she thinks it is better to meet in person than by email. After the initial information is collected, the committee could hold a meeting with public notice. Members were asked to send email input to David or Lorraine. The process by which the Council will post meeting notices is work in progress. Currently, the Council is able to provide meeting notice through the mailing list, local governments, as well as member organizations.

Shaun suggested an item to add to the big picture. He would like to direct staff to reach out to agencies regarding their ex officio status. The members agreed.

Barb Vander Wall suggested that the minutes reflect there will be no special meeting in April, but that there will be a regular quarterly meeting in May, and a special meeting in June.

Lorraine announced that the Energy Communities Alliance meets this Thursday in Washington, D.C. Lorraine is also on DOE's Environmental Management Advisory Board, and will be visiting DOE's Savannah River Site at the end of March. David noted that Lorraine will be Vice Chair this year of the Energy Communities Alliance (ECA). David will recommend the Stewardship Council will be an affiliate member of ECA.

Shaun said he would like to point out how smoothly the transition went as result of the great work of staff, and he offered his thanks.

David asked each of the governments to email him the contact information for their city/county clerk so that meeting notices may be passed on to them. He also encouraged staff from each government to talk to the clerks so they know what to expect and how to process the postings.

The meeting was adjourned at 11:25 a.m.

Respectfully submitted by Erin Rogers.