

St. Mary Rehabilitation Working Group

PROCESS AGREEMENT

As adopted by consensus on May 17, 2017

This **Process Agreement** documents the common expectations of the participants, governments, and agencies involved with the St. Mary Rehabilitation Working Group. The document describes the purpose of the Working Group and how the group will function and operate in pursuit of its purpose. This **Process Agreement** clarifies group procedures for conducting meetings, reporting results, resolving differences, decision making as a group, and accomplishing the task of the group.

Upon adoption (see decision making in Section 7, page 6), each participant in the St. Mary Rehabilitation Working Group agrees to use this agreement to guide his or her collaborative work. This agreement may be amended at any time by consensus of the Working Group (see Section 13).

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Process Agreement

St. Mary Rehabilitation Working Group

Section 1. Introduction

The purpose of this document is to serve as a guide to govern the conversation and activities of the St. Mary Rehabilitation Working Group (Working Group). It describes the purpose, participants, and basic operating guidelines of the Working Group. It should help all participants understand their roles and responsibilities in developing a process for effectively addressing the need to rehabilitate the St. Mary Facilities. The participants of the Working Group may revise or amend this Process Agreement at any time by consensus of the Working Group (see Section 13).

On November 18, 2003, Lt. Governor Karl Ohs convened a meeting in Havre, Montana, to raise awareness of the urgent need to rehabilitate the aging St. Mary Facilities of the Milk River Project, and to start a process through which representatives from the State of Montana, Federal government, Tribal governments, and Milk River basin stakeholders could begin working together to secure congressional authorization and funding to rehabilitate the system. The Working Group was formed to provide input to the Governor's office on an appropriate strategy for rehabilitating the system. The Working Group will be co-chaired and assisted by the State of Montana.

The St. Mary Facilities are "the lifeline of the Hi-line." The system, which consists of a diversion dam and headgate on the St. Mary River, 29 miles of canal, two sets of steel siphons (90 to 74 inches in diameter), and five concrete drop structures, provides the critical trans-basin diversion of water from the St. Mary River Basin to the Milk River Basin. The system is located entirely on the Blackfeet Reservation in Glacier County, Montana.

The St. Mary Facilities were authorized in 1905 as a unit of the U.S. Bureau of Reclamation's (USBR) Milk River Project. The diversion dam and associated infrastructure have been in operation for over 95 years with only minor repairs and improvements. Many of the structures have exceeded their design life by several decades, and are in critical need of repair or replacement. A partnership between basin water users (irrigation, municipal, business, recreation, fisheries, etc), State government, Tribal government and the Federal government is the most promising course of action for pursuing rehabilitation of the system.

The economy of the Hi-Line region is inextricably dependent upon the stable water supply provided by the St. Mary Facilities. The system provides water to irrigate over 110,000 authorized acres on approximately 660 farms within the Milk River Project area with a total of about 140,000 acres irrigated from the Milk River below Fresno Dam. The system also provides water for the Fort Belknap Indian Irrigation Project and municipal water to approximately 14,000 residents in the communities of Havre, Chinook, and Harlem. In an irrigation season (May through September), approximately 70 to 95 percent of Milk River flow near Havre originates from the St. Mary River Basin. Beneficiaries of the St. Mary Facilities also include fisheries, recreation, tourism, water quality, and wildlife. Rehabilitation of the system will also address critical habitat issues associated with species listed as threatened or endangered under the Endangered Species Act.

Loss of the St. Mary Facilities would effectively eliminate approximately 10 percent of Montana's irrigated agricultural economy, devastate Hi-Line communities, and likely have economic repercussions across the state. Failure of the canal, siphons, or drop structures would also likely result in substantial environmental damage on the Blackfeet Reservation and in southern Alberta. In addition, failure of the system would jeopardize the Fort Belknap and Blackfeet Federal Reserved Water Rights Compacts.

Section 2. Working Group Purpose: A “Workable Solution”

The Working Group was created to craft a “workable solution” for rehabilitating the St. Mary Facilities before the system suffers catastrophic failure. A workable solution does not mean a perfect solution, and it does not mean a solution with which every interest is 100% satisfied. A workable solution is one that can be implemented by the parties involved because those parties feel that, on balance, the solution is reasonable, sensible, and responsible.

Section 3. Working Group Commitments

The Working Group is committed to:

- Involving all interests that are willing to seek practical solutions that benefit all interests;
- Promoting a common understanding among individuals and groups with diverse viewpoints;
- Seeking a long-term solution based on sound information;
- Working with the State of Montana, Blackfeet Nation, and U.S. Bureau of Reclamation as equal partners in all stages of rehabilitating the St. Mary Facilities;
- Addressing the environmental concerns of the Blackfeet Nation related to past and future operation of the St. Mary Facilities; and
- Coordinating with the Montana Reserved Water Rights Compact Commission and Tribes on reserved water right issues.
- Working Group meetings are open to the public.
- Public participation is encouraged.

Section 4. Goals and Objectives

To accomplish its purpose, the Working Group is committed to pursue the following goals and objectives. This list may be added to as the group learns more about the challenges and opportunities it faces.

1. Maintain a Process Agreement that clarifies group procedures for conducting meetings, reporting results, resolving differences, decision making as a group, and accomplishing the task of the group.
2. Working Group activities will be guided and carried out consistent with the elements outlined in the Strategic Work Plan, which will be updated on an annual basis or as needed.
3. Work closely with Montana’s Congressional Delegation to seek federal legislation that authorizes and appropriates funding to prepare studies necessary to rehabilitate or replace the St. Mary Facilities for the continued diversion of water from the St. Mary River to the Milk River.
4. Work with Interagency Rehabilitation Teams to review all cost figures and provide recommendations to the Governor’s office on the preferred alternative for rehabilitating the St. Mary Facilities.
5. Work closely with Montana’s Congressional Delegation to seek federal authorization (if required) and appropriation of funding to design and construct the preferred alternative for rehabilitating or replacing the St. Mary Facilities, and address environmental requirements and mitigation.

6. Work with Montana’s Congressional Delegation to develop options for cost-share arrangements among local water users (irrigation, municipal, business, recreation, and fisheries, etc.), and the State and Federal governments.

Section 5. Participants

1. The Working Group should include all interests that:
 - a) Have a bona-fide interest in the St. Mary Facilities and the Milk River Watershed;
 - b) Have an identified constituency;
 - c) Are willing to seek a workable solution that benefits all interests;
 - d) Are willing to abide by the Working Group’s Process Agreement; and
 - e) Have a commitment to the issues and work of the Working Group as a whole.
2. Participants on the Working Group are divided into two categories: Basin Members and Ex Officio Members. Responsibility for providing input to the Governor’s office on development of a “workable solution” for rehabilitating the St. Mary’s system falls primarily on the Basin Members. Ex Officio Members will serve as a sounding board and provide Basin Members with information and advice on technical, administrative and process matters.
3. The Working Group should consist of participants representing diverse views and interests. To the maximum extent possible, the Working Group should include participation from the following sectors of the Milk River and St. Mary River basins.

Basin Members	Ex Officio Members
a) Irrigated Agriculture b) Municipalities c) Blackfeet Tribe d) Ft. Belknap Indian Community e) Fisheries / Conservation f) Recreation / Organized Sportsmen g) Business / Economic Development h) Local Residents i) Local Government j) Milk River Watershed Alliance k) Joint Board of Control	<ul style="list-style-type: none"> • State Government <ul style="list-style-type: none"> • State Elected Officials • DNRC • FWP • Federal Government <ul style="list-style-type: none"> • US Bureau of Reclamation • Bureau of Indian Affairs • US Fish & Wildlife Service • MT Congressional Delegation • Other <ul style="list-style-type: none"> • MT Water Resources Association

4. The Working Group should be comprised of a balanced representation from each interest group. To keep the process efficient, effective, and manageable, the number of Basin Members should not exceed fifteen (15) participants. An up to date list of active membership will be maintained and updated annually. The most recent Active Members List will be used to determine a quorum. Half or more of active membership present will constitute a quorum.

5. Each interest group will select its own representatives. All interest groups involved must agree to the number of representatives from each interest group. Each interest group should attempt to designate alternates to participate when their representatives are absent.
6. Designated representatives of each interest will make every effort to attend every meeting. If a representative is unable to attend a meeting, he or she may make arrangements for an alternate to attend the meeting, but should ensure the alternate is fully informed of the issues under consideration and the progress to date.

Section 6. Participant's Responsibilities

1. Commitment to Seek Agreement
 - a) Each participant agrees to fully and consistently participate in the process unless they withdraw (see subsections 2 i. and 2 j.).
 - b) Each participant agrees to fully explore and understand all the issues before reaching conclusions.
 - c) Each participant agrees to search for creative opportunities to address the interests and concerns of all participants.
 - d) Each participant is committed to seeking agreement. Agreement is reached when the participants agree on a package of provisions that address the range of issues being discussed. The participants may not agree on all aspects of an agreement, but they do not disagree enough to warrant their opposition to the overall package. Each participant:
 - 1) May disagree with any proposal, but must explain why they disagree, and present an alternative proposal that constructively responds to the needs and interests of the other participants;
 - 2) Is committed to implementing agreements that are reached; and
 - 3) Will maintain their values and interests.
 - e) For purposes of this Working Group, agreement is defined as agreement among the "Basin Members" of the Working Group and the interests they represent.
2. Responsibility to Other Participants
 - a) Each participant agrees to candidly identify and share his or her interests while maintaining an open mind for compromise.
 - b) Participants commit to listen carefully to each other, ask questions to understand and make statements to explain or educate.
 - c) All participants recognize the legitimacy of the interests of others and expect their interests will also be respected
 - d) Each participant agrees to share relevant information regarding the issues under consideration, and further agrees to respect the need for confidentiality of certain types of information.
 - e) Participants agree to create a climate that encourages candid and open discussion to get the maximum benefit from the process.
 - f) Each participant agrees to stay on topic, following an agreed upon agenda.

- g) Participants agree to communicate with each other directly, rather than through the news media.
 - h) Each participant agrees that views expressed at meetings are for the benefit of the process and should not be used in other circumstances to challenge positions taken by the other participants or the groups they represent.
 - i) Each participant agrees to respect the decision of any participant to withdraw from the process at any time and for any reason.
 - j) Working Group members unable to attend a meeting will notify the Working Group Coordinator as early as possible prior to the meeting date.
 - k) If a participant decides to withdraw from the process, they agree to submit a letter to the Working Group expressing their intent and explaining their reasons for withdrawing.
3. Responsibility to Constituencies
- a) Participants agree to identify the interests of the constituency they represent.
 - b) Participants agree to seek the advice of their constituency throughout the process.
 - c) Participants agree to make every effort to represent and speak for their constituency.
 - d) Each participant agrees to objectively explain and interpret the process and its proposed outcome to their constituency.
 - e) Each participant agrees to keep their constituency informed of the activities and ideas emerging from the process.
 - f) Each participant agrees to spearhead and organize support of basin residents for the planning and implementation process.
 - g) If a stakeholder group currently not represented on the Working Group seeks membership, they must submit a Letter of Interest to the St. Mary Rehabilitation Working Group board for consideration. The Working Group board may accept or reject the request, or may ask for additional information from the stakeholder group before making a decision. Membership may be delayed if the Process Agreement needs to be modified to accommodate the request.

Section 7. Decision Making Process

1. For the purpose of this Process Agreement, the decision making process outlined in this section applies to the “Basin Members” of the Working Group.
2. The Working Group will **seek** consensus on all decisions and recommendations.
3. Decisions can only be made at public meetings that are attended by a quorum of Working Group members. For the purpose of this Process Agreement, attendance by 50 percent of the most up-to-date “Active Basin Members List” will constitute a quorum.
4. Decisions that are likely to have an impact beyond the immediate sphere of the Working Group can only be made at public meetings, and only if the item to be decided is clearly identified on the meeting agenda.
5. For the purpose of this Process Agreement, consensus is defined as *“a decision in which everyone participates and which everyone can live with and support although it might not be everyone’s preferred decision.”*

6. Consensus will be measured by asking participants how they feel about a particular recommendation, proposal or action according to the following method.

Level of Support	Signified by	Meaning
1	Thumbs Up	I agree and will support this recommendation, proposal, or action.
2	Thumbs Sideways	I'm neutral or may not prefer this recommendation, proposal, or action but I will support it , either because it's not important enough to block, or because it seems to be the best solution at this time, and we reached a conclusion fairly and deliberately.
3	Thumbs Down	I cannot support this recommendation, proposal or action , but here is my suggestion on how the Working Group might move past or address this disagreement or impasse.

7. Consensus is reached if all participants respond with either (1) or (2). When participants disagree with a recommendation, proposal or option (3), they must assume the burden of clearly articulating their concern to the larger group, and providing a constructive alternative(s) that seeks to accommodate the interests of all participants. The larger group must then assume the responsibility of accommodating the concern. The Working Group will continue with this procedure until consensus is achieved or the group decides to disagree.
8. When and if the Working Group has tried in good faith, but is still unable to reach consensus and still wants to move forward on the recommendation, proposal, or action at hand, they may use any, or all, of the following **fallback** mechanisms.
- Identify areas requiring further research and who should do it.
 - Seek a recommendation from an independent third party on how the issue should be resolved. The independent third party will be selected through a consensus process by the Working Group.
 - Deliver a majority and minority report or a succinct description of points of agreement and disagreement to the State appointed Co-Chair. The Co-Chair then determines the course of action.
 - Table the item for further consideration at a future meeting.

Section 8. Process Management

The Co-Chairpersons and Coordinator will seek to be impartial – that is, free from favoritism or bias – and will remain committed to serving all the participants rather than a single participant or interest group.

- The State Co-chairperson will:
 - Serve at the will of the Governor,
 - Act as the primary contact for issues relating to the St. Mary Rehabilitation,

- c. Provide leadership for the collaborative efforts of state, federal, tribal, and local governments,
 - d. Work with the Basin Co-chairperson to call meetings and facilitate meeting processes,
 - e. Provide direction to the state technical liaison
2. The Basin Co-chairperson will:
- a. Serve at the will of the Working Group,
 - b. Ensure that the meeting agendas and notices are prepared and delivered,
 - c. Provide leadership for the collaborative efforts of stakeholders
 - d. Oversee the work of the coordinator,
 - e. Serve as chair of the Executive Committee.
 - f. Work with the State Co-chairperson to call meetings and facilitate meeting processes
3. The Coordinator will:
- a. Serve as the point of contact for the Working Group
 - b. Execute the Working Group Strategic Plan
 - c. Provide expert advice and planning strategies to the Working Group
 - d. Facilitate Working Group Meetings
 - e. Maintain positive relationships and communications with Working Group members, stakeholders, and elected and agency officials.
 - f. Serve the Working Group as directed.
4. Administrative Agent
- a. Aid the Working Group in scheduling meetings and handling of pre- and post-meeting logistics,
 - b. Prepare required meeting materials such as agendas, handouts, etc.,
 - c. Keep a record of meeting discussions including decisions made, areas of agreement, areas of disagreement, and action items,
 - d. Assist Working Group with maintaining an archive of meeting records,
 - e. Act as liaison between subcommittees and the Working Group, and
 - f. Assist the Chairpersons.
 - g. Provide fiscal services
5. The State Liaison will:
- a. Provide funding, technical and process assistance and advice to the Working Group
 - b. Maintain the DNRC hosted Working Group webpage
 - c. Assist the State co-chair as directed

Section 9. Meeting Procedures

1. Each meeting of the Working Group will be held as scheduled and will begin and end on time, unless the participants agree to extend the time of a particular meeting. Meetings will be held at locations that will accommodate the collective needs of all representatives to the extent fair and practical.

2. All meetings are open to the public. A period of public input and comment must be included on each meeting agenda. Public notice of meetings shall be given in advance through the news media.
3. The Working Group Administrative Agent will document the results of each meeting in an appropriate format, including tasks to be undertaken by individuals or organizations, areas of agreement, areas of disagreement, strategies for implementation and action items.
4. At the end of each meeting, the Working Group will create an agenda for future meetings, identifying the issues to be discussed, the purpose of the discussion, and other related information.
5. No less than one week prior to each meeting, the record of the last meeting, the upcoming agenda, and other pertinent information will be distributed to the Working Group by the Administrative Agent.

Section 10. Communication and Media Relations

1. The participants acknowledge the importance of keeping other citizens and the community at large informed of the activities of the Working Group.
2. The Co-Chairs of the Working Group, or his/her designated representative, is the primary spokesperson for the Working Group and will speak on behalf of the Working Group.
3. The Co-Chairs, or his/her designated representative, are responsible for issuing a press release when necessary or appropriate following a Working Group meeting.
4. Participants are free to respond to media inquiries if they clarify that they speak only as an individual and not on behalf of or in association with the Working Group. No participant may characterize the views of other participants to the media or in other forums.
5. Each participant agrees to communicate with other participants directly, rather than through other interests, the news media, or other forums.
6. The Working Group will add any individual or group to the mailing list that requests agendas and meeting summaries related to the Working Group.

Section 11. Executive Committee

1. The Working Group may set up an Executive Committee to oversee the day-to-day operations of the Working Group and serve as liaison between the Working Group and State of Montana.
2. Members of the Executive Committee will be elected from the Basin Members of the Working Group. To the extent practical, membership on the Executive Committee should reflect the membership of the broader Working Group.
3. The Basin Co-Chair of the Working Group will lead the Executive Committee.
4. The Executive Committee will uphold all principals and guidelines in this Process Agreement.
5. The Executive Committee will meet on an as needed basis. Whenever possible, Executive Committee meetings will be announced during regular Working Group meetings. All Executive Committee meetings will be open to the public.
6. The Executive Committee will report back to the larger Working Group with updates at scheduled meetings.

7. Vacancies on the Executive Committee should not prevent the Committee members from carrying out their normal functions. However, vacancies should be filled at the earliest possible convenience.
8. The Executive Committee will provide the operational link between efforts of the Working Group and those of the State of Montana. Duties and responsibilities of Executive Committee include:
 - a) Provide input and oversight of the State's activities between regular Working Group meetings,
 - b) Work closely with representatives of the State to identify priorities and set the strategic direction of the Working Group,
 - c) Determine the need for subcommittees and appoint subcommittee members (with input from Basin Members and Technical Advisors),
 - d) Stay informed and up to date on the activities of the State and Working Group subcommittees,
 - e) Address day to day administrative and financial needs of the Working Group. Day to day management expenses of less than \$1,000 are approved without referral to the full group.
 - f) Set meeting agendas,
 - g) Review grants and other proposals,
 - h) Ensure that the Working Group Work Plan implementation is meeting timelines and milestones,
 - i) Other functions as determined by the Working Group, and
 - j) Provide direction to and oversight for the Coordinator.

Section 12. Subcommittees

1. The Working Group may create subcommittees to carry out specific tasks for consideration by the full Working Group.
2. Subcommittees may not make decisions on behalf of the Working Group.
3. Each subcommittee will have a chairperson chosen by the subcommittee membership. Only Basin Members of the Working Group may serve as Subcommittee Chairs
4. Subcommittees will provide a progress report to the Working Group at regular Working Group meetings. At a minimum the progress report will include a list of participants, issues discussed, what was accomplished, agreements reached, areas of disagreement, and an outline of tasks to be accomplished prior to next subcommittee meeting.
5. Whenever possible, subcommittee meetings will be announced during regular Working Group meetings. All subcommittee meetings are open to the public.
6. In addition to Working Group members, any member of the public may be designated by the Subcommittee Chair to serve on a subcommittee providing that person has a clear interest in the assigned task.

Section 13. Modification of Process Agreement

1. Modification of this Process Agreement can be made at anytime by consensus of the Working Group. However, modifications cannot be made without prior notice.

2. If a suggestion for modification is made at a meeting of the Working Group, it cannot be decided upon until the next meeting of the Working Group, so that all members may have the opportunity to consider the suggestion before deciding.
3. If a suggestion for modification is made between meetings of the Working Group, it must be submitted to the Working Group Executive Committee for inclusion in the next meeting agenda.

Section 14. Political and Legal Considerations

The Working Group acknowledges that rehabilitation of the St. Mary Facilities involves many complex political and legal considerations. This list of considerations may be added to as the group learns more about the challenges and opportunities it faces.

1. USBR studies indicate that the St. Mary diversion facilities are having a negative impact on bull trout (*Salvelinus confluentus*), which are listed as a threatened species under the Endangered Species Act.
2. Rehabilitation of the system involves two federal Indian reserved water right compacts.
3. The water rights compact that was negotiated between the Fort Belknap Indian Community and the State of Montana grants the Tribes up to 654 cubic feet per second of the natural flow of the Milk River. Parties of the Compact agree that continued St. Mary diversions of water to the Milk River are essential to the permanent success of the compact.
4. The St. Mary Diversion and conveyance works lie primarily on the Blackfeet Indian Reservation. The Blackfeet Water Rights Compact grants the Blackfeet Tribe 50,000 acre feet annually of water from the St. Mary River. The Blackfeet people have religious and cultural connections with St. Mary River water and its watershed. A Blackfeet Tribal representative holds a basin membership in the Working Group. The Blackfeet Tribe must be consulted throughout the St. Mary Facilities rehabilitation process.
5. The 1909 Boundary Waters Treaty between the United States and Canada governs the international apportionment of water in the St. Mary and Milk Rivers and their tributaries. Rehabilitation of the St. Mary Facilities must not violate any provisions of this treaty.
6. Canadian and U.S. differences over interpretation of the 1921 International Joint Commission Order on apportioning flows of the St. Mary and Milk Rivers are being addressed by the State of Montana through a separate process.
7. The St. Mary Rehabilitation Working Group is a committee of citizens and representatives of stakeholder groups and is not a legal entity in and of itself.

Appendix

Miscellaneous Agreements on Process St. Mary Rehabilitation Working Group

Expenditure of Working Group Funds

22 January 2007 – Working Group approved \$1,000 spending limit for the Executive Committee.

Procurement of Legal Services.

22 January 2007 – Working Group approved the following statement on procurement of legal services

Recognizing the potential need to procure legal research services, the St. Mary Rehabilitation Working Group has established a line-item in their budget for legal services. The intention of the legal services fund is to provide the Working Group with financial resources to procure qualified legal advice to assist them in their role in developing a workable solution to the rehabilitation of the St. Mary Diversion Facilities.

Any member of the Working Group may propose the need to procure qualified legal research services. A consensus agreement of the Working Group to explore securing legal advice is required before any further action can be taken. The Working Group may appoint a subcommittee or Work Group member(s) to develop the scope and source of proposed legal services.

Prior to procuring legal research services, Working Group members will agree by consensus on the expenditure of Working Group funds, the question or issue to be researched, and on a qualified individual or firm to conduct the research.