

SWCC Executive Committee
Meeting Notes
January 10, 2012

Present: Megan Birzell, Scott Brennan*, Amber Kamps*, Anne Dahl*, Anne Carlson, Bev Yelczyn, Cory Davis, Sandy Mack, Gary Burnett*, Debbie Austin*

**Indicates voting member.*

Action Items:

- **Sandy** will speak with Jennifer, Joni, and our directly affected partners to set up a conference call in early February to discuss our partners' information requests relating to agreements.
- **Megan and Sandy** will revise the Charter according to the recommendations of the ExComm and will send out to the ExComm for consensus by the end of this week.
- **Sandy** will explore whether it's possible for more than one organization to enter into a stewardship agreement on the same landscape (either multiple groups, one agreement or multiple groups, multiple agreements but all same landscape).

I. Welcome

- a. Review/approve notes from last meeting
 - i. The notes from the December 13th meeting were approved unanimously as edited.

II. Update on action items from last meeting

- a. Sandy reported on the following action item from December 13th: Debbie will talk with Jennifer Newbold from OGC and get her interpretation of partnership agreement liabilities.
 - i. Sandy spoke with Jennifer Newbold who said she is willing to review any particular agreement and provide her thoughts.
 - ii. Joni Packard is heading up a national FS working group to look at liabilities associated with volunteer agreements by Looking at each agreement instrument and laying out the liability associated with it so there is consistent interpretation within the FS. The group is expected to produce something by early summer, but we're unclear what this product will be. This group is not looking at stewardship contracting because that falls under a different authority. Joni is interested to hear particular partners' questions and concerns.
 - iii. ACTION ITEM: Sandy will speak with Jennifer, Joni, and our directly affected partners to set up a conference call in early February to discuss our partners' information requests relating to agreements.
 - 1. Anne suggests vetting this with the National Forest Foundation and having them participate in this discussion.

III. Review proposed, updated Charter revisions from December

- a. In response to questions concerning the relationship of the SWCC to FACA, Sandy reviewed the final FACA Rule from 2001 and concluded that it only applies to an organization “established and utilized by a federal agency.” The Rule defines “utilized” as meaning “managed or controlled.” There is no precise definition of “manage” and “control” in this context. The Rule identifies three questions to be used as a litmus test to determine whether a group falls under the purview of FACA: 1) Does the agency manage or control the membership or composition of the group? 2) Does the agency manage or control the group’s agenda? 3) Does the agency fund the group’s activities?
 - i. The group agreed that we can answer “no” to all three questions, and thus, the SWCC does not fall under the purview of FACA.
 - ii. There was discussion about whether FS employees should be removed from voting membership in the SWCC in order to make it clear that the FS does not manage or control the SWCC. The OGC recommended this course of action, but the group was concerned that removing FS employees from voting membership would violate FLRA. Therefore, the group recommended that FS employees not serve as co-chairs of the SWCC or any of its subcommittees.
 - iii. RECOMMENDATION to the SWCC: The SWCC Charter should be amended such that a FS employee is not a co-chair. The Charter should further be amended to address and clarify all three FACA questions: membership/composition, funding, and agenda. Language directly from the FACA regulations should be used where appropriate to ensure maximum consistency and clarity.
 - 1. This change should be applied to all subcommittee charters and structures.
 - b. ACTION ITEM: Megan and Sandy will revise the Charter according to the recommendations of the ExComm and will send out to the ExComm for consensus by the end of this week.
 - i. The ExComm-agreed-upon Charter revisions will be sent to the full SWCC at least one week prior to the February 14th SWCC meeting and will be voted on at that meeting.
- IV. Preliminary discussion of how to approach projects in which only a portion is funded by and/or consistent with the requirements of the CFLR Program
- a. This issue came up in response to two projects currently under analysis in the Swan Lake District (Glacier Loon and Cold Jim) that may or may not be 100% consistent with CFLR but that are seeking CFLR funds for certain portions of these projects. TWS submitted comments on the Glacier Loon Scoping Notice asking questions about how and whether this project is consistent with CFLR. Last week, TWS, SEC, and FS met last week to discuss these two projects and discuss how to move forward. Everyone present at that meeting agreed that, ultimately, all projects that go forward under CFLR must be fully consistent with CFLR and that many of the concerns raised could be addressed by improving

communication such that we all have a common understanding of terms used in project descriptions.

- b. This issue has raised the larger question of: What does it really mean to be consistent with CFLR?
 - i. It is technically and legally possible to pursue projects that have both CFLR-consistent and non-CFLR-consistent components as long as CFLR funds and match are only expended on the CFLR-consistent components. However, from the public's perspective, it will be difficult to distinguish between CFLR-consistent and non-CFLR-consistent portions of one project.
 - c. This issue is likely to be larger in the Swan, in which the District must work within the confines of the Grizzly Bear Agreement. Because they only have a 2- to 3-year window in which to work in one Grizzly Bear Management Area, it is most efficient to do as much as possible within that window. This may mean that some proposed activities will focus on timber management, in accordance with the Forest Plan, while other activities are focused on restoration and are consistent with CFLR. Given budget and staffing realities, it is inefficient and a waste of taxpayer dollars to conduct two NEPA analyses for these two projects in the same area when they can incorporate all activities in one NEPA analysis. Yet it will be difficult to explain the nuances of project funding to the public, and if we combine CFLR and non-CFLR components into one NEPA analysis, the public may not understand that CFLR funds and match are only being spent on the CFLR-consistent aspects of the project.
 - d. After discussion, the group agreed to offer the following recommendations to the SWCC:
 - i. We will work together to ensure that Glacier Loon and Cold Jim are as consistent with CFLR as possible.
 - ii. Going forward, we should work together to ensure that projects are fully consistent with CFLR.
 - iii. We should make sure that local community collaborative processes are followed in CFLR project development. Those processes may differ by community.
 - e. The group discussed, but did not reach consensus, whether a NEPA analysis needs to be fully consistent with CFLR or whether some parts of a NEPA analysis can be inconsistent with CFLR while other parts are consistent.
- V. Discussion on stewardship authorities and ensuring that we continue to have agreements in place for the entire SWCC project area
- a. The Rocky Mountain Elk Foundation is in the process of canceling a stewardship agreement that covered part of the SW Crown. There was discussion about whether another group should enter into a stewardship agreement covering the SW Crown so that we don't lose this implementation tool. Specifically, the Blackfoot Challenge is considering entering such an agreement.

- i. The group agreed that the Challenge needs to figure out for itself whether it makes sense to enter into a stewardship agreement.
- b. It is ultimately the FS' decision to determine the best tool to use to implement a project, but they would like input from the SWCC and all interested parties regarding the best tool to use.
- c. ACTION ITEM: Sandy will explore whether it's possible for more than one organization to enter into a stewardship agreement on the same landscape (either multiple groups, one agreement or multiple groups, multiple agreements but all same landscape).