

**STATE OF MONTANA
DEPARTMENT OF JUSTICE
Natural Resource Damage Program
1301 East Lockey, P.O. Box 201425
Helena, MT 59620-1425
(406) 444-0205/FAX: 444-0236**

MEMORANDUM

TO: Members of the Trustee Restoration Council:
Tim Burton, Chief of Staff, Governor's Office
Bill Rossbach, Chair, UCFRB Advisory Council
Tim Fox, Attorney General and Mark Mattioli, alternate
John Tubbs, Director, DNRC
Tracy Stone-Manning, Director, DEQ
Jeff Hagener, Director, FWP

FROM: Carol Fox, NRDP *CAF*

DATE: June 18, 2013

SUBJECT: Trustee Restoration Council Meeting on June 24, 2013

The Trustee Restoration Council (TRC) will meet on Monday, June 24, 2013 from 2:30 to 4:00 p.m. in Room 152 of the Capitol. Attached are the meeting agenda and backup materials. All of these materials are also available from the NRDP website at <http://doj.mt.gov/lands/advisorycouncil.asp#trc>. Following is a description of the major agenda items.

2009 Milltown State Park Grant Modification Proposal – Action Item

TRC members will decide on their recommendations to the Governor regarding Fish, Wildlife and Park's (FWP) proposed amendment to the scope of the approved 2009 Milltown State Park (Park) grant project (copy attached). This project was approved in 2010 in the amount of \$2,663,749 for the development of initial infrastructure for the new Park (\$927,530), acquisition of additional property for the Park (\$1,080,000), and initial operation and maintenance activities over a 5-year period at the Park (\$656,219). The project was amended in 2012 to change the focus to the Confluence area, with public access developments associated with vehicular access on the International Paper road instead of the approved Gateway access points/features as originally approved. The 2013 modification request from FWP involves a revision to the Confluence area access route alternative, as well as approval to develop some limited Park infrastructure associated with non-motorized access amenities at the Confluence area, prior to the establishment of permanent vehicle access to that area. Although these revisions collectively do not entail a budget change, they do involve a substantive change of scope, which requires the Governor's approval and consideration by the Upper Clark Fork River Basin (UCFRB) Remediation and Restoration Advisory Council (Advisory Council) and TRC.

This proposed modification was distributed widely in mid-May, summarized at the May 22, 2013 Advisory Council meeting, and subject of a 30-day public comment period that ended on June 14, 2013. Attached is a copy of supplemental information provided by FWP to the Advisory Council in follow-up to the Council's

summarize the modification, NRDP staff will summarize public comments and staff input, and Bill Rossbach will summarize Advisory Council input. The NRDP supports the FWP's proposed modification. The Advisory Council will determine its recommendation at their meeting scheduled for June 19, 2013. After consideration of public comment, the TRC will decide on its recommendations.

Modification to Big Butte Acquisition Grant – Action Item

This project was originally approved in 2005 in the amount of \$667,641 for purchase of approximately 300 acres of open space, trail improvements, and fencing. The grant recipient, Butte-Silver Bow (BSB) estimates it will not have expended approximately \$50,000-\$70,000 of the amount originally budgeted for this project when all the land transactions and current fencing and trail work are complete. BSB requests that this amount be reallocated from the "acquisition" budget category to "protection" and that it be allowed to use this amount for a percentage of the operations and maintenance costs for the Big Butte property. BSB will continue to cover 80% of the approximately \$35,000 annual cost of operations and maintenance for this property. It seeks to use this reallocated amount to cover the additional 20% annually for ten years or until the amount is spent. Because the project was approved with the understanding that the operations and maintenance costs will be fully covered by BSB, NRDP staff determined that this modification would entail a substantive change in scope.

This proposed modification was distributed widely in mid-May, summarized at the May 22, 2013 Advisory Council meeting, and subject of a 30-day public comment period that ended on June 14, 2013. We received two comment letters specific to the Big Butte modification, one in support and one in opposition to it. At your June 24, 2013 meeting, BSB staff will summarize the modification, NRDP staff will summarize public comment and staff input, and Bill Rossbach will summarize Advisory Council input. The NRDP supports the FWP's proposed modification. The Advisory Council will determine its recommendation at their meeting scheduled for June 19, 2013. After consideration of public comment, the TRC will decide on its recommendations.

East Helena NRD Settlement Early Restoration Funding Proposal – Action Item

TRC members will decide on their recommendations to the Governor regarding a proposed process for the East Helena NRD site to fund early restoration projects. Attached are copies of the proposal and a one page summary of it. Rather than waiting to implement any restoration at the East Helena site until determination of the final cleanup actions, this funding process would allow the State to consider funding time critical, early restoration projects, each costing less than \$75,000, or less, using a portion the State's \$5.9 million NRD settlement funds obtained for restoration at this site.

This early restoration funding process proposal was distributed widely in late April 2013, and subject of a 30-day public comment period that ended on May 31, 2013. Attached are copies of the four support letters received on the proposal.¹ At your June 24, 2013 meeting, NRDP staff will summarize the early restoration process and public comment. After consideration of any additional public comment at the meeting, the TRC will decide on its recommendations.

Following completion of these action items, program updates and an additional opportunity for public comment will be provided prior to meeting adjournment.

¹ Two of the comment letters, in addition to supporting the early restoration proposal, make certain other comments or raise questions that the staff believes should be responded to. The staff's response to these comments will be emailed to you on Friday, June 21, 2013.

Trustee Restoration Council Meeting
Monday, June 24, 2013, 2:30 to 4:00 p.m.
Room 152 at the Capitol
AGENDA

- 2:30 – 2:40 Introductions and Meeting Overview – Tim Burton
- 2:40 – 3:00 2009 Milltown State Park Grant Modification – Action Item
- Summary of modification – FWP staff
 - Summary of public comments received and NRDP input – NRDP staff
 - Advisory Council input – Bill Rossbach, Chairman of UCFRB Remediation and Restoration Advisory Council
 - Public Comment
 - TRC discussion, input, and action on recommendation to the Governor – facilitated by Tim Burton
- 3:00 – 3:20 2005 Big Butte Acquisition Modification – Action Item
- Summary of modification – Butte-Silver Bow staff
 - Summary of public comments received and NRDP input – NRDP staff
 - Advisory Council input – Bill Rossbach
 - Public Comment
 - TRC discussion, input, and action on recommendation to the Governor – facilitated by Tim Burton
- 3:20 – 3:45 Proposed East Helena NRD Early Restoration Process – Action Item
- Summary of Proposal and Public Comments Received – NRDP staff
 - Additional Public Comment
 - TRC discussion, input, and action on recommendation to the Governor – facilitated by Tim Burton
- 3:45 – 4:00 Program Updates – Carol Fox, NRDP
Additional Public Comment
Announcements/Adjourn



Proposed NRDP Grant Modification for the Milltown State Park Development (5-16-13)

Background

In 2010 Montana Fish, Wildlife and Parks (FWP) was awarded a grant from the Natural Resource Damage Program (NRDP) to develop the initial infrastructure for the new Milltown State Park (\$927,530), to acquire additional property for the Park (\$1,080,000), and to conduct initial operation and maintenance activities over a 5-year period at the Park (\$656,219). This 2009 grant project was based on a 2008 conceptual design developed with Missoula County and the Milltown Superfund Redevelopment Working Group. Significant changes in the development context prompted FWP, through Montana State Parks, to seek a grant modification in 2012 to shift the development focus and funds from the Gateway area to the Confluence area. In addition, funds awarded for the design of the Clark Fork River pedestrian bridge were reallocated to the Confluence area development. (Bridge design was terminated at the conceptual level (30% design). The Governor approved this 2012 change in scope, subject to a funding condition stipulating that permanent access be secured before development in the Confluence area, as recommended by the NRDP, the Advisory Council, and the Trustee Restoration Council.

This second request for modification relates to the entrance to the Confluence area, the site of trails, river access and interpretive exhibits. Two roads enter the area: 1) the access road that crosses the International Paper (IP) land to the west of the Confluence; and 2) access via Juniper Drive, a state road managed by Missoula County, that enters the park through a low, narrow and aging railroad underpass owned by Burlington Northern Santa Fe and leased by Montana Rail Link. The underpass poses challenges for safe traffic flow and emergency access, but it has yet to be investigated from a traffic engineering and public safety perspective. The 2012 modification was based on use of the IP access road.

Since the 2012 modification, plans for entrance into the Confluence area significantly hinged on access through the IP property. IP has offered a donation of the land to the State, but it has steadfastly denied FWP the full opportunity to perform its due diligence in acquiring the 16-acre parcel. A 5-acre landfill, containing boiler ash and wood waste from the Champion mill, forms the northern portion of the land. IP has declined to give FWP the permission to conduct the necessary test sampling in the landfill to determine if contamination issues exist that would make the State potentially liable in the future. This issue remains at an impasse.

Proposed Modification

Public access is vital to the Confluence area, the heart of the park and a prime administrative site. Montana State Parks requests the authorization to investigate and pursue all options for public access at the Confluence site, including, but not limited to:

- Vehicle access through the Juniper Drive railroad underpass;
- Parking at the end of Juniper Drive with walk-in access through the underpass; and
- Future access through IP land.

While investigating access, Montana State Parks also seeks to proceed with non-motorized vehicle access amenities at the Confluence area such as, but not limited to; a visitor contact station, an interpretive shelter, hand launch boat ramp, safety and boundary fencing, toilets, signing, and trails. Until permanent road access is established into the Confluence area, FWP does not propose to construct roads or other park amenities that are associated with vehicle access. The modification would give Montana State Parks greater latitude to pursue park implementation at the already very challenging site.

FWP seeks a favorable recommendation by the Advisory Council and Trustee Restoration Council and a decision by the Governor to approve:

A modification to the 2009 NRDP grant, amended in 2012, for Montana Fish, Wildlife & Parks to investigate and pursue alternative options for public access into the Confluence area and to start limited infrastructure activities associated with non-vehicle access within the Confluence area prior to establishment of permanent access.



An aerial view of the IP property, Juniper Drive and the Confluence area of Milltown State Park.



MEMORANDUM

TO: Upper Clark Fork Basin, Remediation and Restoration Advisory Council
FROM: Chas Van Genderen, Parks Division Administrator 
DATE: June 14, 2013
RE: Proposed NRDP Grant Modification for the Milltown State Park Development
NRDP Advisory Council Meeting -- June 19, 2013

Last month Montana State Parks (a Division of Montana Fish, Wildlife and Parks) presented its request for a change of scope for the NRDP grant to evaluate and pursue options for securing access to the confluence area of Milltown State Park. FWP was asked to provide estimated costs for any engineering analysis, road improvements and land or easement acquisition. Montana State Parks has identified the following options and estimated costs:

**Acquisition of Right of Way Easement on the International Park (IP) Access Road
(Estimated cost \$50,000)**

The cost of this option is not budgeted for in any of the Milltown grant funds as we had originally hoped this property would be donated by IP, but since that no longer appears to be feasible, redirection of funds would occur to assure this important task is funded. If an acquisition of a right of way easement from IP were available, FWP could purchase a 60 ft. road right of way from the entrance of the IP property to state park boundary, a distance of approximately 1,200 linear feet and area of approximately 1.66 acres. Actual cost would be subject to an appraisal.

Upgrade of the IP Access Road (Estimated cost \$150,000)

The design is essentially complete for the work needed to upgrade the IP route into the confluence area for safe public access. The work includes adding a gravel base, widening the road in some locations, addressing drainage issues and laying 3 inches of surfacing on the full-length of the road. This cost is budgeted for in the current project budget design, i.e. the development of the Confluence Area, with the plan to bid as a single development package.

Juniper Drive Access (Estimated cost is \$5,000 for the engineering analysis of the MRL underpass and \$150,000 for parking area construction)

This route is not the preferred alternative. The cost of this option is not budgeted for in our existing Milltown grant, however, funds earmarked for the IP access road upgrade could be redirected to this option if that preferred alternative was not to yield positive results. Montana



State Parks would work with partners at Missoula County and the Montana Department of Transportation to explore the possibility of providing access to the park via Juniper Drive, which is managed by the County but owned by MDT. This option may include constructing a parking area outside of the park to facilitate walk-in access. Montana State Parks would pursue a public access easement through the Montana Rail Link railroad underpass. An engineering analysis to evaluate traffic safety/access feasibility of the underpass structure would be required.

c: Carol Fox, NRD
Doug Martin, NRD



**Public Comments on the
2009 Milltown State Park
Grant Amendment**

Coleman, Kathleen

From: Gary Matson <gmatson@montana.com>
Sent: Monday, May 27, 2013 10:47 AM
To: Natural Resource Damage Program
Subject: Modify Milltown Park Grant

My letter supporting modification of the Milltown Park Grant follows:

Gary Matson
Box 308
Milltown MT 59851

27 May 2013

Natural Resource Damage Program
PO Box 201425
Helena MT 59620-1425

Re: Modification of the Milltown State Park Grant

Dear Sirs,

I support modifying the Grant to allow Park development at both the Gateway and Confluence to proceed before the final routes for public access have been fully defined. It is particularly important that the restoration at the Confluence be completed and, when practicable, it complement the location of trails and other facilities. These features will be integral to the fully developed Park no matter if/where there is vehicular access.

As always, I share with many others in being deeply appreciative of the State's remarkably successful restoration at the Milltown site and look forward to the long-anticipated beginning of Park development. I believe this beginning can take place at an appropriate level not dependant upon the exact access points. As Park development begins, heightened public appreciation and interest can help move forward the decision making for the final public access points.

Sincerely,

Gary Matson



BOARD OF COUNTY COMMISSIONERS
200 W BROADWAY ST
MISSOULA MT 59802-4292

PHONE: (406) 258-4877
FAX: (406) 721-4043

BCC 2013-083
June 11, 2013

RECEIVED
JUN 13 2013
NATURAL RESOURCE
DAMAGE PROGRAM

Ms. Carol Fox and Member of the
Upper Clark Fork Advisory Committee
Natural Resource Damage Program
P.O. Box 201425
Helena MT 59620

RE: 2013 MILLTOWN GRANT MODIFICATION

Dear Ms. Fox and Advisory Committee Members.

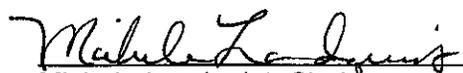
Missoula County supports the proposed Milltown Grant Modification Proposal.

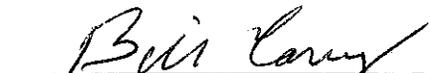
Missoula County was a co-applicant on the 2009 Natural Resource Damage Program grant for the Milltown project. We have consulted with the Department of Fish, Wildlife and Parks (FWP) regarding this grant and support the proposed modifications.

An important goal of the project is to provide public access to the restored confluence. Facilities to manage public use, protect natural resources and prevent conflicts with neighboring landowners are related to that goal. Public use of the Clark Fork River for floating and fishing has increased dramatically in recent years. FWP needs the flexibility to investigate options for providing access to the confluence. Missoula County is committed to working cooperatively with FWP to secure public access to the state park.

The Natural Resource Damage Program's support for the project is critical to its success. We hope the advisory committee will look upon the grant modification proposal favorably.

Sincerely,
BOARD OF COUNTY COMMISSIONERS


Michele Landquist, Chair


Bill Carey, Commissioner

NOT AVAILABLE FOR SIGNATURE
Jean Curtiss, Commissioner

BCC/ppr
cc: Peter Nielsen, Environmental Health
Pat O'Herren, CAPS Director



RECEIVED

301 W. Alder
Missoula MT 59802

JUN 13 2013

NATURAL RESOURCE
DAMAGE PROGRAM

To: Members of the UCFRB Remediation and Restoration Advisory Council

From: Milltown Redevelopment Working Group

Date: May 25, 2013

Subject: Milltown Park Grant Modification Proposal

RECEIVED MAY 31 2013

Thank you for coming over and touring the Milltown State Park site and listening to, seeing and experiencing some of our challenges with development.

The Milltown Redevelopment Working Group and FWP have been working for many years to overcome obstacles in developing this area for public use again. It has historically been a very popular site for river access and we are devoted to seeing it be better than ever! River recreation has been and will continue be very popular on the Blackfoot and Clark Fork rivers. Each year it increases.

Since the confluence area and lower Blackfoot have been closed to access, the public has been using areas that really impact public safety and property rights of our community's private land owners. There is a tremendous amount of pressure to develop the Park, restore safe river access and mitigate impacts upon landowners.

We have hit a speed bump in the development with regard to the access points and would really appreciate your help by allowing FWP the freedom to change the scope of The Milltown State Park grant funding to explore and possibly redesign different options for permanent access to the Confluence area, the Gateway and State property across from the old weigh station. We also support the release of grant funds that will allow FWP to begin developing limited Park infrastructure such as vault toilets, trails, signage and grading prior to the establishment of permanent access to that area.

These changes do not entail a budget change; they do involve a substantive change of scope to the grant project as amended in 2012 regarding access points and timing of development of features with respect to establishment of permanent access.

Once again thank you for coming over to tour the site and thank you for the work you are doing for our rivers and the state of Montana.

Sincerely

Milltown Redevelopment Working Group

Bonner Milltown Community Council
PO Box 655
Milltown MT 59851

10 June 2013

Missoula County
Board of County Commissioners
200 W Broadway
Missoula MT 59802

Dear Commissioners:

Please forward this letter, on our behalf, to the Natural Resource Damage Program, PO Box 201425, Helena MT 59620-1425 nrp@mt.gov

Re: Modification of the Milltown State Park Grant

The Bonner Milltown Community Council supports modifying the Milltown State Park Grant to release funds that would allow development to move ahead before a final public access point to the Confluence has been defined. We believe that public access at some location is assured because of ongoing efforts by FWP and Missoula County. The completion of restoration at the Confluence and the beginning construction of trails and interpretive displays will create important momentum in bringing to reality the long-established goal of establishing the Park. The Park will be a unique and powerful asset for revitalizing our community and boosting its economic redevelopment.

We celebrate the great successes of remediation and restoration at Milltown and are grateful for the key roles played by NRDP. We look forward to celebrating the established Milltown State Park as a symbol of these remarkable accomplishments.

Sincerely,



Karl Uhlig
Council President

From: Christine Brick [<mailto:chris@clarkfork.org>]
Sent: Friday, June 14, 2013 5:04 PM
To: Natural Resource Damage Program
Subject: comments on Milltown Park grant modification

The Clark Fork Coalition would like to go on record as supporting FWP's changes to the terms of their grant funding for Milltown Park. We note that the amount of money and the overall scope of work won't change, simply the timing and sequencing of park construction. We believe that it's very important to begin some of this work now, rather than waiting on a final agreement for vehicle access. Walk-in access should be available now, and given high demand for river access points around Missoula, it is critical to establish the minimum infrastructure necessary to allow it. The level of construction that FWP envisions would help solve a very problematic issue with residents of Juniper Drive, who currently are forced to host illegal parking and river access across their property. Thanks for considering these comments.

Best,
Chris

~~~~~

Christine Brick  
Science Director  
Clark Fork Coalition  
P.O. Box 7593  
Missoula, MT 59807  
ph. 406-542-0539 ext. 202



**Name: Big Butte Property Acquisition Project -- \$667,641.00  
(Contract No. 600181)**

**Request: Modification – Scope of Work**

**Progress to Date.** Pursuant to the 2005 Big Butte Acquisition grant contract and scope of work, funds have been used by Butte-Silver Bow to acquire land (approximately \$510,000) and to purchase materials to protect the area (approximately \$54,000). No project management or administrative expenses were charged to the NRD grant, but rather provided as a significant in-kind match. In all, 27 legal parcels were acquired from 16 private landowners to bring 305 acres into public ownership to comprise the area now known as the Big Butte Open Space Park (see Exhibit 1, Site and Ownership Map). Pending the completion of final project tasks in spring 2013, approximately \$40,000 will be spent to complete one last land acquisition (\$3,000) and to repair the perimeter and install trail user amenities (\$32,000; kiosk with trail map, permanent garbage containers, etc.). It is expected that there will be approximately \$50,000 to \$70,000 remaining in the grant when all project objectives are achieved.

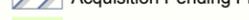
**Operations and Maintenance Request.** Big Butte is managed and maintained as part of Butte-Silver Bow's system of parks, trails and open space assets. BSB invests approximately \$35,000 in Big Butte Open Space O&M annually. The grant scope and contract modification for the Big Butte Property Acquisition Project is to re-program the remaining grant funds toward long-term maintenance. This request substantially modifies the original project scope of work. In the 2005 application, Butte-Silver Bow agreed to assume responsibility for operations and maintenance because at the time use of NRD funds for operations and maintenance was not encouraged. Today, however, modifications to NRD guidelines allow project work plans to include O&M.

Re-zoning of the Big Butte area from Single-Family Residential (R1) to Open Space-Conservation (OS-C) was adopted in 2012, and the attendant land use regulations of the OS-C zone afford the area effective protection. Trail enhancements and perimeter fencing have promoted stewardship among users and fostered the return of native flora and fauna. Butte-Silver Bow is committed to sustaining the success of this restoration project through effective, long-term maintenance. Applying remaining grant funds to this site over the next several years would provide a stable, shared source of support for BSB to implement its long-term commitment to this site.

**Description.** As reflected in Exhibit 2, Budget, Butte-Silver Bow seeks to modify the existing grant agreement and convert the remaining grant funds (estimated at \$50 – 70,000) to long-term maintenance, dispersed through an annual, cost-share stipend of approximately \$7,000 for up to 10 years. The NRD stipend would be combined with Butte-Silver Bow resources to help defray direct costs such as maintenance laborer's salary and wages and weed control, fence repair, garbage/debris pick-up and miscellaneous maintenance tasks. Management time, equipment and indirect costs would continue to be paid by Butte-Silver Bow.

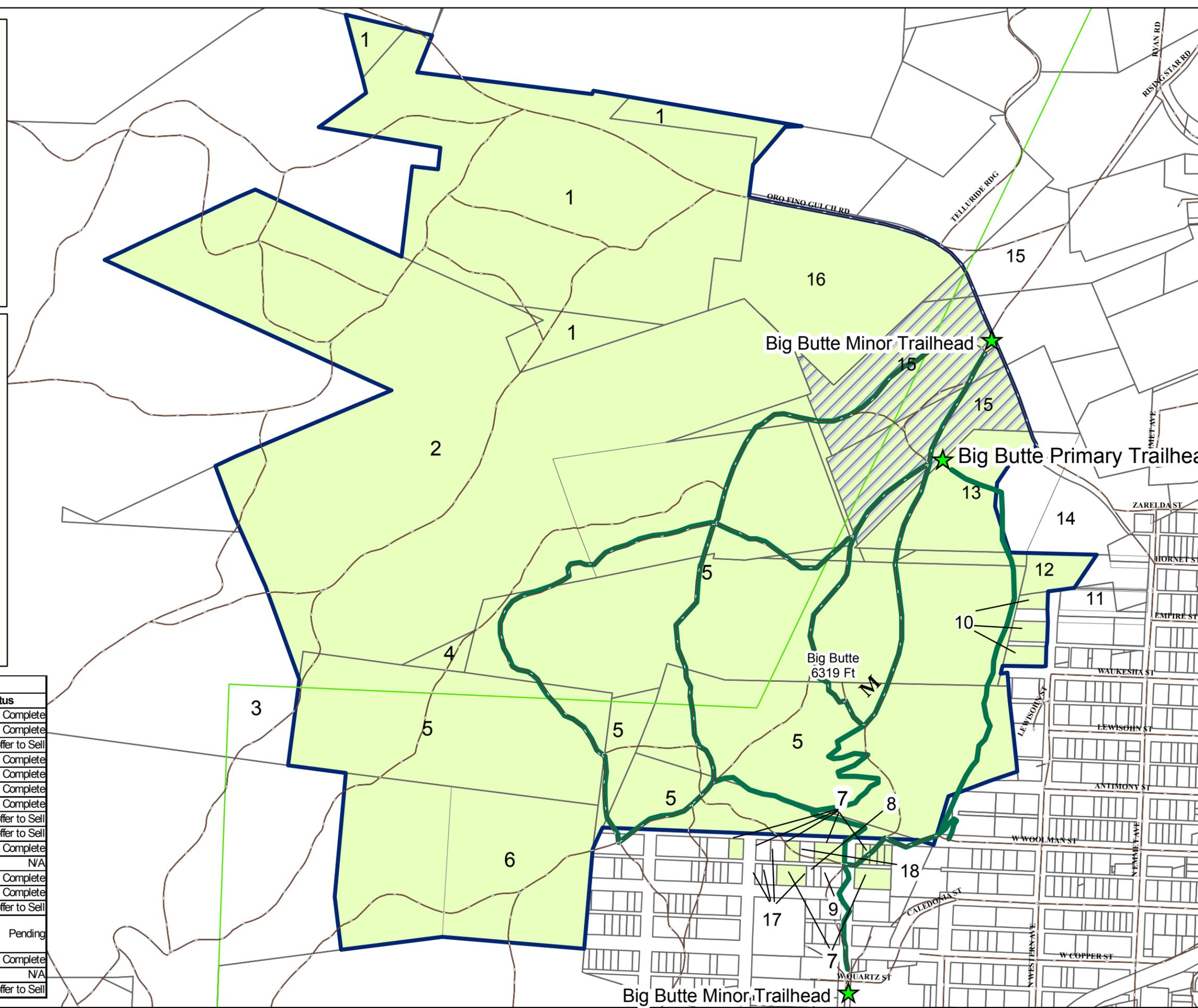
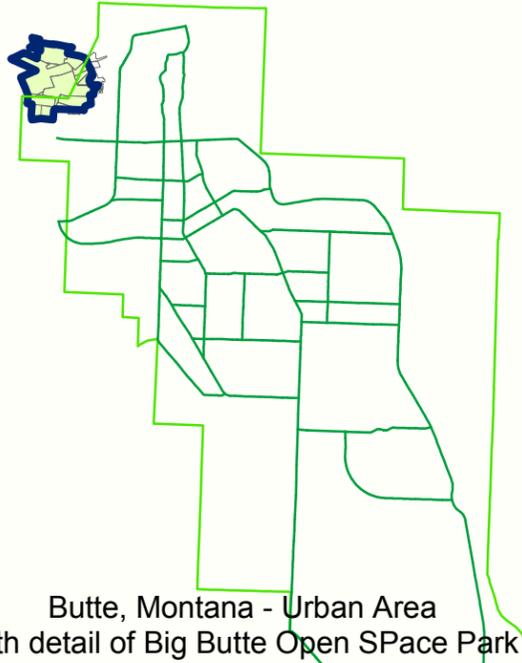
After the NRD funds are spent, Butte-Silver Bow would assume all maintenance costs. As the project sponsor, we believe the request for re-programming of remaining grant funds to operations and maintenance is reasonable, consistent with the goal of the natural resource damage program, and will be instrumental in the long-term success of the Big Butte project.

# Exhibit 1., Big Butte Site Ownership Map

-  Arterial Road
-  Road, Street, or Trail
-  Big Butte Trail System
-  Big Butte Open Space Park Boundary
-  Acquisition Pending Final Survey and Filing
-  Acquisition Complete
-  Property Boundary (Reference Use Only)
-  Urban Limits



740 370 0 740 Feet



**Figure 1. Parcel Ownership**

| Parcel No. | Owner                                 | Cost         | Size (Acres) | Status                 |
|------------|---------------------------------------|--------------|--------------|------------------------|
| 1          | MMP                                   | \$66,030.00  | 44.02        | Complete               |
| 2          | Sorini                                | \$135,360.00 | 90.24        | Complete               |
| 3          | Chattel                               | \$4,500.00   | 3            | Declined offer to Sell |
| 4          | Burgess                               | \$5,000.00   | 0.79         | Complete               |
| 5          | MMP                                   | \$150,000.00 | 80.99        | Complete               |
| 6          | MMP                                   | \$0.00       | 28.97        | Complete               |
| 7          | CCA                                   | \$16,932.00  | 1.891        | Complete               |
| 8          | Grinolds/Burgess                      | \$875.00     | 0.08         | Declined offer to Sell |
| 9          | Cleveland                             | \$2,613.00   | 0.24         | Declined offer to Sell |
| 10         | MMP                                   | \$24,422.00  | 0.977        | Complete               |
| 11         | BSB                                   | \$0.00       |              | N/A                    |
| 12         | Johnson                               | \$25,000.00  | 1.16         | Complete               |
| 13         | Hollow                                | \$19,500.00  | 14.75        | Complete               |
| 14         | Hollow                                | \$25,000.00  | 5            | Declined offer to Sell |
| 15         | Mining Claim Master/Henningsen/Cooney | \$35,640.00  | 23.76        | Pending                |
| 16         | Cooney                                | \$21,750.00  | 16.11        | Complete               |
| 17         | BSB                                   | \$0.00       |              | N/A                    |
| 18         | Barry                                 | \$4,000.00   | 0.015        | Declined offer to Sell |

**Exhibit 2: Operations & Maintenance Request**  
**Big Butte Open Space Project - Annual Operations & Maintenance**  
 2013 Addendum Proposal - Natural Resource Damage Program Advisory Council  
 13-May-13

| DESCRIPTION                                                   | Annual<br>Hours | Total            | NRDP<br>Share   | BSB<br>Share     |
|---------------------------------------------------------------|-----------------|------------------|-----------------|------------------|
| <b><u>Salaries and Wages</u></b>                              |                 |                  |                 |                  |
| Jon Sesso, Planning Director                                  | 52              | \$2,121          | 0               | \$2,121          |
| Julia Crain, Special Projects Planner                         | 104             | 2,288            | 0               | 2,288            |
| Kelly Dennehy, Parks and Rec Maintenance Supt.                | 104             | 2,811            | 0               | 2,811            |
| Maintenance Laborers                                          | 320             | 6,941            | 4,164           | 2,776            |
| <b>Sub-Total Salaries</b>                                     |                 | <b>14,161</b>    | <b>4,164</b>    | <b>9,997</b>     |
| <b>Benefits @ 53% of Wages</b>                                |                 | <b>7,505</b>     | <b>2,207</b>    | <b>5,298</b>     |
| <b>TOTAL WAGES AND BENEFITS:</b>                              |                 | <b>21,666</b>    | <b>6,372</b>    | <b>15,295</b>    |
| <b>SUPPLIES &amp; MATERIALS</b>                               |                 |                  |                 |                  |
| Weed control herbicide and supplies (average over five years) |                 | 1,000            | 600             | 400              |
| <b>EQUIPMENT (truck and tools)</b>                            |                 | <b>8,000</b>     | <b>0</b>        | <b>8,000</b>     |
| <b>9. MISCELLANEOUS</b>                                       |                 |                  |                 |                  |
| Indirect Costs @ 20% of salaries/benefits                     |                 | 4,333            | 0               | 4,333            |
| <b>TOTAL ANNUAL O&amp;M COSTS:</b>                            |                 | <b>\$ 35,000</b> | <b>\$ 6,972</b> | <b>\$ 28,028</b> |



**Public Comments on the  
2005 Big Butte Grant  
Amendment**



## Coleman, Kathleen

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**From:** Tom Bowler <mttomb@bresnan.net>  
**Sent:** Saturday, May 25, 2013 1:48 PM  
**To:** Natural Resource Damage Program  
**Subject:** Disposition of residual funds form 2005 Big Butte Grant

I once more read with equal levels of fascination and disgust at how the local Butte-Silver Bow government is requesting approximately \$50,000 dollars in "left over" funds that they would allegedly apply to long term maintenance of the Big Butte Park. I have to immediately ask why. I fail to see how a significant amount of previous expenditures can be properly accounted for and feel the taxpayer and advocate for the natural environment would be far better served if the NRD program simply took that cash and set it on fire to heat the offices in Helena. Even that modest thermodynamic benefit and potential to lower the heating bill would be orders of magnitude more beneficial to the citizens of Montana than to turn it over to the likes of Mr Sesso and local Butte government.

In watching the NRD process play out over a number of years I do not believe that I have observed a thing stray so far from the intent that I was lead to believe the Natural resource damage legal action was intended to remedy; be so fraught with fraud, waste, and abuse; while so absurdly failing to achieve its stated intent of restoring or replacing natural resources lost to historic, grossly negligent industrial abuse. FOR THE BENEFIT OF THE PUBLIC.

I will cite as examples both the local Thompson Park and Greenway trail. In each case, major NRD money has been allocated to these areas to allegedly provide opportunities to the public to enjoy the natural resources of the state. Extravagant, expensive signage is prominent in both locations. However, the number picnic tables and use sites are laughable, and every time I have had a call to attempt to use the new, high dollar restrooms that were likely paid for with NRD money -- these were locked up tighter than a drum. Just today, May 25th, Memorial Day weekend; I stopped in at the "Whiskey Gulch Station" west of Butte on the Greenway. There were several cars in the parking lot to indicate the restored environment in that area are both enjoyed and used. One group of folks was apparently right beside the repaired Silver Bow Creek taking portrait photos that looked to be along the lines of graduation or wedding photos. Thus, it would seem, the efforts to fix the historic environmental damage are paying dividends when the money is actually applied. What stuck out like a sore thumb amid this halcyon scene was that the extravagant bathroom was bolted tight, as I have found it to be every single time I have stopped at that location. So, how well was that money spent I ask. A large modern restroom with a grossly over done sign in front of it is of zero value to the public if it remains locked up and unusable. Once again, I would contend that every dime of NRD money that went into that restroom facility would have been of more value to the Montana Citizen if the funds had been set on fire. If people cannot use what the money is being spent on, the money should never be spent.

So it is with the request for "maintenance" money by Butte-Bow. From the past evidence I have seen, I seriously doubt that any of that \$50,000 will go to benefit the public, but merely to subsidize the horrendous inefficiencies of the local government. Thus Mr Sesso can comfortably remain polishing the seat of his chair with his derriere and laud how he has brought in the dough so the local ratepayer can sleep comfortably at night.

The Montana Standard recently ran an article written by Mr Gary Swant, an area avian expert and advocate. He noted how the wetlands in the I-15/90, Lexington Avenue area in Butte could be a greatly improved bird watching location and general pleasant place to pause if some modest parking, observation, and restroom facilities could be placed there. This to me is the kind of use the NRD money was intended for. Of course, a fellow like Mr Swant, in contrast to Mr Sesso, probably has more than a day job doing work for the general good and does not have the time to write a grant to get NRD money so that kind of beneficial use goes unrealized and unavailable to the public as parasites like the local Butte government with too much time on their hands let the grants fly and suck the NRD money out of the bank faster than Dracula draining Lucy Westenra. Then wrap a chain around the bathrooms they build with it to insure that nobody gets in to actually use the facilities so they might have to expend the "maintenance" money they have shaken the fund down for. Of course, a "modest" facility at the Butte wetlands is probably not in the cards once the process starts rolling. As the old saying goes, if your only tool is a hammer -- everything looks like a nail to you. Mr Swant's vision of a functional

avian enjoyment area would soon turn into another Three Gorges Dam project once the hired consultants Got involved and most of the money went to the enormous glass sign in front of the off-limits restroom than an actual useable privy for the bird enthusiast to use.

Silver Bow Creek below the Butte sewage plant discharge remains uninhabitable to fish because the plant upgrades that could remedy that conditon drag on while Butte-Silver Bow, the EPA, and ARCo play a game of "He's touching me, he's touching me" Meanwhile, above the sewage plant discharge a fish mortality study done a few years ago below the Montana Pole effluent discharge and in proximity to the LAO mine tailings remediation site had zero casualties. Fish are frequently seen rising on that section of the stream. Frogs, snakes waterfowl, beaver, and muskrats among others, along with more terrestrial wildlife abound. So what do ARCo and the EPA do here, they repeatedly rip out the beaver dams and continue to treat the stream as the industrial process pipe that it used to be rather than the naturally functioning, successfully remediated stream that the cited wildlife would indicate that it has become and which the public was lead to believe it would be after the NRD mitigation efforts had been completed. We went from a stream that could not support an insect or plant let alone a fish or frog -- to a willow lined habitat which the purported public and private stewards of same seem to loathe as they scatter the baby geese from the beaver ponds time and again and rip into the beaver lodges and dams with an excavator. Those piles of beaver dams are far more appealing to the nature enjoying public piled in heaps on along the road than actually in Silver Bow Creek after all. So once again, i ask, what value has the citizen of Montana realized if NRD turned Silver Bow Creek into a living stream again and folks like BSB, EPA and ARCo continue to impede the ongoing improvement over petty turf wars and power mad PFC ego trips.

If the "left over" NRD money so going to frittered away again by handing it over to BSB, please split it down the middle. Half for them, half to be retained by the NRD program to make periodic, random, unannounced inspections to insure the fences at Big Butte actually got fixed and that the bathrooms are open so the bills for the septic service can be proven legitimate.

Tom Bowler  
735 W Broadway  
Butte, Montana 59701

**Fox, Carolyn A.**

---

**From:** Coleman, Kathleen on behalf of Natural Resource Damage Program  
**Sent:** Friday, June 07, 2013 1:38 PM  
**To:** Fox, Carolyn A.  
**Subject:** FW: Big Butte Grant Modification

**From:** Jocelyn Dodge [<mailto:jocedodge@gmail.com>]  
**Sent:** Friday, June 07, 2013 6:48 AM  
**To:** Natural Resource Damage Program  
**Subject:** Big Butte Grant Modification

I am in favor of the proposed modification to the Big Butte grant to spend the balance of the budget on operation and maintenance of the open space area. Since the grant was awarded there has been a change to the NRDP grant program to allow funding for operation and maintenance of facilities constructed with NRDP funds.

I think it is a wise investment of money to ensure areas such as Big Butte are able to be maintained so long as they are matched with local or state government funds. Other projects such as Bonner and the Kids Fishing Pond included an operation and maintenance component in their grant requests so this request is in line with other NRDP projects.

Since the goals and objectives of the grant have been met; the remaining balance should go toward operation and maintenance.

Thank you,

Jocelyn Dodge  
114 Waldron  
Butte, MT 59701



## Summary of Proposed East Helena Early Restoration Funding Process

The State of Montana will entertain the funding of Early Restoration Projects for restoring injured or lost natural resources associated with the East Helena Natural Resource Damages (NRD) Site. This document describes the process for the submittal and consideration of proposals for such funding, identifies the eligible project types and their potential locations, and summarizes the Early Restoration Proposal submittal requirements. This document also provides a description of the proposal evaluation and funding decision and approval process. Approved Early Restoration Proposals would be funded through the East Helena NRD Settlement Restoration Fund.

In 2006, the State of Montana filed several environmental claims, including remediation and NRD, against ASARCO in the bankruptcy proceeding that had been filed in the federal bankruptcy court in Corpus Christi, Texas in August 2005. The court approved a final settlement of the ASARCO bankruptcy litigation and adopted an ASARCO reorganization plan in December 2009. As part of that settlement, ASARCO separately paid approximately \$5.9 million to the State for restoration of natural resources in the East Helena area to settle the State's compensatory NRD claims, plus ASARCO conveyed an option to the State to acquire 232 acres of ASARCO-owned land in the East Helena area to be used for wildlife habitat restoration, recreation and open space. The \$5.9 million was placed in East Helena NRD Settlement Restoration Fund, which is a State of Montana special fund that was created for the settlement. These restoration funds are in addition to the approximate \$115 million paid by ASARCO to clean up and restore the former ASARCO Smelter site and other contaminated lands in the East Helena area.

Federal NRD regulations provide that prior to spending NRD funds, a state must prepare a comprehensive restoration plan that provides for the expenditure of such funds on appropriate projects that would restore, rehabilitate or replace the injured or lost natural resources that were the subject of the NRD claim. An exception to that rule has developed that allows what is referred to as "Early Restoration." In this case, the State of Montana has not embarked upon developing its Restoration Plan as it is awaiting the determination of the final clean-up actions at the former ASARCO Smelter site, including Prickly Pear Creek as it runs along that site. Rather than implementing no restoration until that time, however, the State has decided to put out for public consideration and comment this document that, if finally approved by the Governor, would fund relatively small, but critical, early restoration projects that meet certain criteria.

To be funded, Early Restoration Projects must restore or substantially improve or replace the relevant injured natural resources. All Early Restoration Proposals must be located within the vicinity of the former ASARCO Smelter site and must be time critical, of great importance, and capable of being implemented within 24 months of funding approval. Also, to assure that Early Restoration does not use up a large proportion of the Restoration Fund, no individual Early Restoration Proposal will be funded for more than \$100,000. These and all other additional requirements for project funding are described in this document.



**EAST HELENA NRD SETTLEMENT  
FUND (08231)  
EARLY RESTORATION PROPOSALS**

**APPLICATION and INSTRUCTION FORM**

APRIL 2013

**PREPARED BY:**

**STATE OF MONTANA  
NATURAL RESOURCE DAMAGE PROGRAM  
1301 EAST LOCKEY  
P. O. BOX 201425  
HELENA, MT 59620-1425**

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# Introduction

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The State of Montana will entertain the funding of Early Restoration Projects for restoring injured or lost natural resources associated with the East Helena Natural Resource Damages (NRD) Site. This document describes the process for the submittal and consideration of proposals for such funding, identifies the eligible project types and their potential locations, and summarizes the Early Restoration Proposal submittal requirements. This document also provides a description of the proposal evaluation and funding decision and approval process. Approved Early Restoration Proposals would be funded through the East Helena NRD Settlement Restoration Fund.

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# Section 1

## Overview of the Application Process for Funding East Helena NRD Early Restoration Proposals

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This application and instruction booklet is based on the criteria and procedures specified for Early Restoration Proposals in the April 2012 *Final Upper Clark Fork River Basin Interim Restoration Process Plan (Process Plan)*. Applications for funding call for a fairly high level of detail, so early restoration proposals need to be well developed. This booklet includes:

- Section 1 – Funding overview section that summarizes application eligibility and submittal procedures;
- Section 2 – Instructions for Completing and Submitting an Early Restoration Proposal Application Form that specifies the steps for completing an application;
- An “Application Checklist” to be completed and submitted with application materials;
- An “Applicant Information and Proposal Summary Form” to be filled out by all applicants and attached to the front of the completed application;
- Instructions for completing the Proposal Abstract;
- Instructions for completing the Technical Narrative;
- Instructions for completing the Environmental Impact Checklist and Narrative;
- Instructions for completing the Criteria Statements;
- Instructions for the Proposal Budget Estimate Forms and Budget Narrative; and
- Supplemental guidance in Attachment A. Additional guidance is on the NRD Program (NRDP) website at [www.doj.mt.gov/lands](http://www.doj.mt.gov/lands).

### **APPLICATION SUBMITTAL**

Applicants shall submit an application containing the following:

- An **original and four (4) additional copies (one copy unbound)** of the application including all supporting documentation.
- Project area and project location maps.
- Color maps or photos that are included in the application must be included in all copies.
- Continuous page numbers and a table of contents.
- A **compiled** version of the application in WORD format, the budget forms in EXCEL format, and an electronic version of the project maps.
- A shapefile of project area (if readily available).

The application material should be sent to:

**State of Montana  
Natural Resource Damage Program  
1301 E. Lockey Avenue  
P.O. Box 201425  
Helena, MT 59620-1425  
Phone: 406-444-0205**

If you have questions, or if the NRDP staff can help you in any way, please contact the NRDP office at (406) 444-0205.

### **APPLICANT ELIGIBILITY**

Governmental entities, private individuals who are U.S. citizens, and private entities are eligible to submit East Helena NRD Settlement Early Restoration Proposals.

### **EARLY RESTORATION PROPOSAL ELIGIBILITY RESTRICTIONS**

Eligible projects are those that will improve injured natural resources or lost services. In addition, early restoration proposals must be also be time critical, of great importance, of limited costs—less than \$75,000, and capable of being implemented within 24 months of Trustee funding approval. Applicants for early restoration proposals must demonstrate that their proposals merit an expedited funding decision ahead of completion of the natural resource restoration plans to be developed for the East Helena NRD site.

### **LOCATION ELIGIBILITY RESTRICTIONS**

All early restoration project proposals for must be located within the vicinity of the Former ASARCO East Helena Smelter.

### **FUNDING SELECTION PROCESS**

#### **Minimum Qualification Screening**

To assure that each proposed project meets the minimum qualifications for funding, the NRDP will conduct an initial application screening focused on the following items:

1. That the application is completed fully and accurately, with all necessary information.
2. That the proposed project would restore, rehabilitate, replace, or acquire the equivalent of the natural resources injured or services lost as a result of releases of hazardous substances by ASARCO or its predecessors.
3. That the proposed project be located within the vicinity of the Former ASARCO East Helena Smelter for which the State made NRD claims in the ASARCO bankruptcy proceeding.

4. That the proposed project is time critical, of great importance, and capable of being implemented within 24 months of funding approval.
5. That the project will not potentially interfere, overlap, or partially overlap with the remediation or restoration work provided for or planned under existing or anticipated consent decrees, Record of Decisions, Work Plans, or restoration plan.
6. The estimated cost of the project must be less than \$75,000.

If the NRDP determines a project does not meet the minimum qualifications for funding, the applicant, within 15 days of receiving written notice of this determination, may appeal the determination to the Trustee Restoration Council (TRC). Early restoration proposals, which are consistent with items 2, 3, and 5 above, that are not accepted for early restoration will, at the applicant's request, be considered for inclusion in the subsequent restoration plan.

### Application Evaluation

All applications will be thoroughly reviewed and evaluated by the State. This application packet specifies the criteria the State will use to evaluate early restoration proposals that meet the minimum qualifications. The NRDP will assess the degree to which each such proposed early restoration project meets each criterion. If each proposed project that meets the minimum qualifications, the NRDP will prepare a draft "Early Restoration Plan" that contains its recommendations for funding or not funding the project, and the reasons for its recommendations based on its analysis. This draft Early Restoration Plan will be subject to a 30-day public comment period and subsequently considered by the TRC and Governor. Based on input from the NRDP, TRC, and the public, the Governor will make a final funding decision.

### Project Implementation and Applicant Responsibilities

Upon approval of an early restoration plan, an applicant will be required to enter into a grant agreement with NRDP before any funds can be expended or received. The model grant agreement available on the NRDP's website indicates the general applicant responsibilities.<sup>1</sup> Detailed scopes of works, budgets, and project schedules are required in all agreements, and must be approved by NRDP before any work, which will be paid for by East Helena NRD Settlement Restoration fund, can begin. Expenses incurred by an applicant before the grant agreement becomes effective will not be reimbursed.

The NRDP will ensure that any approved early restoration projects are implemented by the applicants consistent with scope and budget of the project as approved. Accordingly, prior to beginning construction, and preferably before bid packages are advertised, an applicant will be required to submit final design plans to the NRDP for review and concurrence that the proposed design is consistent with the approved proposal. The State shall have the authority to terminate project funding if it finds that the project design is not consistent with the approved proposal, including the 24 month project completion requirement.

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<sup>1</sup> <http://doj.mt.gov/wp-content/uploads/2011/06/samplegrantagreement.pdf>

# Section 2

## **Instructions for Completing the Early Restoration Proposal Application**

This section outlines the 6 steps to follow in submitting a completed Early Restoration Proposal Application Form for funding consideration. **All applications must contain continuous page numbers and a table of contents.** Applicants are also expected to inform the NRDP during the application review process of any developments that would affect the viability of the proposed project. NRDP staff may contact the applicant to obtain omitted information, to clarify issues, or to verify information contained in the application. **All applications are subject to public review.** If an applicant wishes to keep information confidential, it must meet the confidentiality conditions specified in the Guidance on Confidentiality available upon request or from the NRDP website and be submitted in accordance with the procedures specified therein.

### **EAST HELENA NRD SETTLEMENT EARLY RESTORATION PROPOSAL APPLICATION CHECKLIST (This Checklist Must Be Included With the Application)**

To check for application completeness, be sure that the following items are included in your application. **Make sure the pages have been numbered continuously in your application and you have included a table of contents.**

- \_\_\_\_\_ **Application Materials**
  - \_\_\_\_\_ **Original and four (4) copies (one unbound) including all supporting documentation**
  - \_\_\_\_\_ **Project Area and Project Location Maps**
  - \_\_\_\_\_ **Continuous Page Numbering and a Table of Contents**
  - \_\_\_\_\_ **A Compiled (into one file) electronic version of the application in WORD format. Budget forms should be submitted in EXCEL.**
  - \_\_\_\_\_ **A shapefile of project area (if readily available)**
  
- \_\_\_\_\_ **Step 1. An “Applicant Information and Project Summary Form”**
  
- \_\_\_\_\_ **Step 2. A Project Abstract**
  
- \_\_\_\_\_ **Step 3. Technical Narrative**
  - \_\_\_\_\_ **Project Area Map**
  - \_\_\_\_\_ **Project Location Map**
  
- \_\_\_\_\_ **Step 4. Environmental Impact Checklist and Narrative**
  
- \_\_\_\_\_ **Step 5. Criteria Statements**
  
- \_\_\_\_\_ **Step 6. A Proposal Budget using attached EXCEL spreadsheet, including:**
  - \_\_\_\_\_ **a. A Budget Summary Form**
  - \_\_\_\_\_ **b. Budget Detail Forms**
  - \_\_\_\_\_ **c. A Budget Narrative**

**Step 1. Applicant Information and Project Summary Form**

- 1. Name of Applicant(s) \_\_\_\_\_
- 2. Project Title \_\_\_\_\_
- 3. Type of Entity\* \_\_\_\_\_  
(city, corporation, private individual, association, etc.)

(\*Corporation and Foundation applicants are required to submit corporation information as follows: Articles of Incorporation, and Certificate of Good Standing. Partnership applicants are required to submit a Partnership Agreement and a list of the names of the Partners. Limited Liability Company applicants are required to submit Articles of Organization, a list of the members/managers, and Certificate of Good Standing. Non-Profit Associations are required to submit a list of members, Articles of Incorporation and Certificate of Fact. Non-Profit Corporations are required to submit Articles of Incorporation and Certificate of Good Standing. Please attach these documents to this form.)

- 4. Description of Project Location (Attach maps showing project area and project location per instructions under Technical Narrative (Step 3A) \_\_\_\_\_

- 5. Injured Natural Resource(s) and/or Impaired Services to be Restored, Rehabilitated, Replaced or Equivalent Acquired through Project \_\_\_\_\_

6. Authorized Representative: \_\_\_\_\_  
(Name) (Title)

Mailing Address: \_\_\_\_\_  
(Street/PO Box)

\_\_\_\_\_  
(City/State/Zip) (Telephone)

Contact Person\*: \_\_\_\_\_  
(Name) (Title)

Mailing Address\*: \_\_\_\_\_  
(Street/PO Box)

\_\_\_\_\_  
(City/State/Zip)

Phone: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

(\*For Corporate, Partnership, L.L.C., or Cooperative Association applicants, list Registered Agent and Office for Service of Process)

**7. Proposed Funding Sources and Estimated Costs**

On the table below, enter the source and amount of all funding that may be used for this project. Indicate all potential sources of funds that you intend to apply for this project, even if you have not yet applied for the funds or have not yet received a commitment from the source. Indicate whether matching funds are cash or in-kind.

| Proposed Funding Source Form            |                           |                              |                           |                       |
|-----------------------------------------|---------------------------|------------------------------|---------------------------|-----------------------|
| East Helena Settlement Restoration Fund |                           |                              | Amount in (\$)<br>Dollars | Funding<br>Percentage |
|                                         |                           |                              |                           |                       |
| Matching Funds                          |                           |                              |                           |                       |
| Matching Fund Source                    | Cash<br>Matching<br>Funds | In-kind<br>Matching<br>Funds | Amount in (\$)<br>Dollars | Funding<br>Percentage |
| A                                       |                           |                              |                           |                       |
| B                                       |                           |                              |                           |                       |
| C                                       |                           |                              |                           |                       |
| D                                       |                           |                              |                           |                       |
| E                                       |                           |                              |                           |                       |
| F                                       |                           |                              |                           |                       |
| <b>Total Cash Match</b>                 |                           |                              | Total Cash % →            |                       |
| <b>Total In-kind Match</b>              |                           | → → → → →                    | Total In-kind % →         |                       |

(Lightly shaded areas are automatically calculated on the electronic version of this form)

**Estimated Total Project Cost**

\_\_\_\_\_

**8. Private (non-Governmental) Applicant Financial Information**

- a. Are there any lawsuits, judgments, or obligations pending for or against you? \_\_\_\_\_
- b. Have you ever declared bankruptcy? \_\_\_\_\_
- c. Are any of your tax returns delinquent or under dispute? \_\_\_\_\_
- d. Any unpaid deficiencies? \_\_\_\_\_
- e. Are you a party to a lawsuit? \_\_\_\_\_
- f. Do you have any other contingent liabilities? \_\_\_\_\_
- g. Do your current and deferred liabilities exceed the value of your assets? \_\_\_\_\_

**Explain all YES answers in a statement attached to this form.**

**9. Certification for Individuals or Private Entities**

Individuals or private entities requesting funds must sign the following certification.

|                                                                                                                                                                                                                                                                                                                                                        |                    |           |       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-----------|-------|
| <b>Certification for Individuals or Private Entities</b>                                                                                                                                                                                                                                                                                               |                    |           |       |
| I (We) the undersigned, have provided this financial information as part of my (our) application for an Early Restoration Proposal. I (We) certify that the statement is complete and accurate to the best of my (our) knowledge and I (we) authorize the State of Montana to investigate my credit worthiness and any of the matters described above. |                    |           |       |
| Individual(s)                                                                                                                                                                                                                                                                                                                                          |                    |           |       |
| _____                                                                                                                                                                                                                                                                                                                                                  | _____              | _____     |       |
| Name                                                                                                                                                                                                                                                                                                                                                   | Signature          | Date      |       |
| _____                                                                                                                                                                                                                                                                                                                                                  | _____              | _____     |       |
| Name                                                                                                                                                                                                                                                                                                                                                   | Signature          | Date      |       |
| Private Entities                                                                                                                                                                                                                                                                                                                                       |                    |           |       |
| _____                                                                                                                                                                                                                                                                                                                                                  | _____              | _____     | _____ |
| Name of Authorizing Agent                                                                                                                                                                                                                                                                                                                              | Federal Tax ID No. | Signature | Date  |

**10. Authorizing Statement**

An authorized agent/agents representing the applicant must by his/her signature indicate that the application for funds and expenditure of matching funds, as represented, is officially authorized.

|                                                                                                                                                                                                                                                                    |       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| <b><u>Authorization</u></b>                                                                                                                                                                                                                                        |       |
| I hereby declare that the information included in and all attachments to this application are true, complete, and accurate to the best of my knowledge, and that the proposed project complies with all applicable state, local, and federal laws and regulations. |       |
| I further declare that, for _____ (Project Sponsor), I am legally authorized to enter into a binding contract with the State of Montana to obtain funding if this application is approved. I understand that the Governor must authorize funding for this project. |       |
| _____                                                                                                                                                                                                                                                              | _____ |
| Project Sponsor                                                                                                                                                                                                                                                    | Date  |
| _____                                                                                                                                                                                                                                                              | _____ |
| Authorized Representative (signature)                                                                                                                                                                                                                              | Title |
| _____                                                                                                                                                                                                                                                              |       |
| Fed Tax Id. No.                                                                                                                                                                                                                                                    |       |



any of the explanatory text contained in the application under these headings in your application. For example, under the “A. Project Location” subheading, do not repeat explanatory text that describes the two types of needed maps.

The Technical Narrative should not include budget information, which is requested under Step 6. Please use the following format in presenting your Technical Narrative on your own paper:

## **Technical Narrative**

**Applicant Name:** \_\_\_\_\_

**Project Title:** \_\_\_\_\_

(Text of Technical Narrative)

### **OUTLINE FOR TECHNICAL NARRATIVE**

#### **A. Project Location – *Where is the project located?***

1. Provide at least two maps or aerial photographs. One aerial photo/map should be 8.5 X 11 inch in size that shows the project location in relation to a well-known landmark, such as a town or city. The second aerial photo/map should at an appropriate scale that shows the details of the project as necessary. Please provide any additional maps that may be needed to identify and explain your proposal. All maps/aerial photos need to include pertinent topographic and geographic information, scale, and north arrow.
2. Specifically describe the projects location as it relates to the location of the Former ASARCO East Helena Smelter.

#### **B. Describe Project Need and Exigency/Define the Problem – *Why is there a problem?***

1. Specifically describe the problem that this project will address. What are the identified and potential causes of the problem or what circumstances precipitated the need for the project? Of these, what are the limiting factors – those factors that are most responsible for the causes of the current condition?
2. Which of these factors has been quantified and to what degree? Describe any uncertainty about the importance of these factors.
3. Describe any other ongoing or past efforts to address the needs of the project, including any unsuccessful past efforts.
4. Explain why your proposal is time critical and of great importance such that it merits an expedited funding decision ahead of completion of the restoration plan to be developed.

#### **C. Describe the Project Goals and Objectives – *What is the Proposal’s Purpose?***

Note: The success of a project is determined upon achieving the stated goals and objectives. If possible, all goals and objectives should be measurable, either quantitatively or qualitatively. Under the Monitoring Plan (item D9), applicants are asked to address the link between the goals and objectives and the proposed monitoring tasks.

1. What are the goals of this project, or the problems you intend to solve through implementation of this project?
2. What are the specific project objectives you plan to accomplish in order to achieve these goals?
3. What quantitative and/or qualitative results, if any, will this project achieve?
4. How will it improve injured natural resources or lost services?

Note: A goal is a broad statement that identifies the desired future condition or end toward which an endeavor is directed. Objectives are descriptions of measurable outcomes or specific desired end points that are used to determine whether or not the goal has been successfully accomplished. Tasks are the steps needed to reach desired end points/future conditions. Goals and objectives are identified in this section of the Technical Narrative; tasks are identified under the next section.

**D. Describe the Project Implementation Plan – *How will the proposal be conducted?* Describe in chronological order the individual tasks or activities necessary to accomplish the work under each objective.**

1. Describe the overall approach to project implementation, and generally describe how the project is capable of being implemented within 24 months of Trustee funding approval.
2. Identify each of the project phases, and the specific tasks comprising each phase and relate them to the project goals and objectives. For construction projects, discuss each phase of construction, including any planning or design activities that must be completed before initiating any construction activities. Indicate the level of design that has been completed for the project (e.g., conceptual, 60%, 90%) that is the basis for construction cost estimates. Describe the tasks proposed to move from the current condition to the desired future condition and how the proposed tasks will impact the current condition in a demonstrable manner.
3. Identify the project staff for the particular tasks and quantify the staffing time necessary to complete the project.
4. Identify the contracted services necessary to complete the project. NRDP procurement guidance (<http://doj.mt.gov/lands/>) requires that most contracted services above \$5,000 be competitively bid. Indicate whether you have conducted the competitive procurement process for such services or plan to competitively bid such services after the Governor's funding decision.
5. Identify any permits, regulatory approvals, or property access agreements that have been obtained or will be needed to complete the project. If you propose work on private land that will cause ground disturbance, provide an updated property ownership map and documentation of the landowner's consent to the proposed work that would disturb private land. Ownership information should be verified through the State Cadastral database (<http://nris.mt.gov/nsdi/cadastral>).

6. Indicate whether the project is a phase of a larger project for which additional funding is needed and, if so, the targeted funding sources. Examples include a stream restoration project on a particular reach that is one part of an entire stream restoration effort.
7. Describe the measures that will be undertaken to ensure long-term effectiveness.
  - a. Describe the measures that will be undertaken to ensure that the intended resource improvements will be maintained in the long-term. If the work will occur on private land, explain what measures will be used to assure that future land management activities will not disrupt areas that will be restored and/or diminish the projects benefits. Include documentation of the current landowner's commitment to conduct these measures. For additional guidance on this issue, please consult the NRDP's "Guidance for Work on Private Lands," which is available upon request or from the NRDP website.
  - b. For aquatic and terrestrial construction projects, identify the service life of the proposed improvements, indicate what routine maintenance will be performed to upkeep the improvements in the long-term, and indicate what entity is committed to performing and funding these routine maintenance activities. Provide documentation, such as a letter, from that entity verifying this future commitment.
8. Describe Methods and Technical Feasibility of the Proposed Project.
  - a. Provide a detailed description of methods to be used to conduct specific tasks, including appropriate citations/documentation.
  - b. Describe how this approach has been used successfully to address similar problems, if it has.
  - c. What are the certainties and uncertainties associated with any innovative approaches to the proposed project?
  - d. Are there any uncertainties in the proposal that require further resolution? Please discuss these uncertainties, including uncertainties associated with a proposal that is based on a conceptual design.
  - e. Are there any data gaps and how do you propose to address them?
  - f. Describe any potential complications and how they may affect the implementation time schedule.
9. Describe the Monitoring Plan.
  - a. Describe proposed quantitative (e.g., sampling parameters) and/or qualitative (e.g., photo surveys) monitoring activities. Include a description of the link between the goals and objectives specified under Item C with the proposed monitoring tasks. If you have a project for which the success can be determined without monitoring (e.g., a land acquisition), or for which the monitoring needed to document success would not be cost-effective, provide such justification.
  - b. Describe what monitoring data will be collected, why, how, and by whom.
  - c. Describe how problems will be addressed if monitoring indicates objectives are not being met.
  - d. How does this monitoring effort consider or coordinate with other monitoring activities being conducted within the vicinity of the project area?

**E. Provide a Project Time Schedule – *When will the proposal be done?***

The format of the project schedule may be either a list of activities, table, or flow chart. The schedule should provide the State with a time frame for the project from the starting date through completion of the project (project implementation within 24 months). The schedule should specifically describe how the project is capable of being implemented within 24 months of Trustee funding approval. Tasks or activities should be listed in the expected completion sequence. If particular tasks must be completed prior to others, this should be indicated. In planning a schedule, keep in mind that successful applicants must enter into a contractual agreement with NRDP before work can begin on a project. If desired, include the schedule with the list of tasks (Item D). For example, the following expected dates in the project schedule may be applicable to some proposals:

1. Dates for submittal and receipt of required permits, licenses, agreements, and approvals;
2. Dates for advertising bids and requests for proposals, and contract award dates;
3. Expected dates that each task or activity will begin and end; and
4. Expected project completion date.

**F. Describe Qualifications of the Project Team – *Who will be conducting the work?***

Briefly summarize the skills, qualifications, and experience of the project team.

**G. Provide Supporting Technical Documentation**

1. List of references and literature citations pertinent to the project and technical approach.
2. List of unpublished materials relevant to the technical feasibility of the project and indicate where these materials are located. Be prepared to provide copies of these materials upon request.
3. Copies of easements, right-of-way, or other access agreements, and copies of other documents required to complete the project. If these are not available, outline what will be pursued as part of project implementation, and provide copies of any boilerplate agreements that will be followed.

**This supporting documentation should be provided as a separate appendix to the main text of the application.**

**Step 4. Environmental Impact Checklist and Narrative**

All applicants must evaluate the proposal’s potential impacts to the physical and human environment. Analysis of these potential impacts can alert applicants to considerations in the location, design, or construction of projects that will help to avoid adverse environmental impacts or expensive mitigation or construction costs. The State will use the information provided in this checklist and narrative, along with any necessary supplemental information, to assure that all adverse environmental impacts and reasonable alternatives have been adequately characterized and considered during decision making.

Provide a narrative evaluation of the proposal’s potential impacts to the physical and human environment. This includes an analysis of potential socio-economic impacts, such as the changes in property tax revenues, employment, and agricultural, commercial or industrial

production that might result from the project. Use the checklist on the following pages as a guide in your consideration of these impacts. The discussion should include direct and secondary adverse impacts that could arise from the project in the short- or long-term, including those that involve resources that are not a part of the project. Direct impacts are those that occur at the same time and place as the action that triggers the event. Secondary impacts are those that occur at a different location and/or time than the action that triggers the event.

- A. Discuss in the narrative those items identified on the checklist where a potentially adverse impact will occur, where a permit or approval will be required, or where mitigation will be required. Characterize the degree of significance of these impacts (e.g., minor, moderate, or major) and whether they are short- or long-term, direct or secondary.
- B. Where a potentially adverse impact to the environment or human health is projected, the applicant must provide the following:
  - 1. A description and analysis of any reasonable alternatives that would avoid the impact and a justification for the selected alternative; and
  - 2. An evaluation of appropriate short- and long-term measures to mitigate each potentially adverse impact and a discussion of the effects of those mitigation measures on the proposed project.

As part of its analysis of impacts to human health and safety, the State will determine if protective measures should be added to the project to ensure safety.

**Instructions For Completing the Environmental Impact Checklist:** Complete the attached Environmental Impact Checklist and Narrative for the proposed project. The NRDP will review the information provided and prepare its own evaluation to determine whether further information is required. For each impact category, five possibilities are listed on the form:

- 1. No Impact or Not Applicable to this project
- 2. Potentially Adverse Effect
- 3. Potentially Beneficial Impact
- 4. Agency Approval or Permits Required
- 5. Mitigation Action(s) Required

Space is provided next to each of the subject areas. Check the appropriate box that characterizes possible impacts. In some cases, it may be appropriate to indicate more than one possibility.

**Environmental Impact Checklist (use this format)**

| <b>Impacts to Physical Environment</b>                      | <b>No Impact</b> | <b>Potentially Adverse</b> | <b>Potentially Beneficial</b> | <b>Permits or Approvals Required</b> | <b>Mitigation Required</b> |
|-------------------------------------------------------------|------------------|----------------------------|-------------------------------|--------------------------------------|----------------------------|
| 1. Soil suitability, geological or topographic constraints  |                  |                            |                               |                                      |                            |
| 2. Air quality                                              |                  |                            |                               |                                      |                            |
| 3. Groundwater resources and quality                        |                  |                            |                               |                                      |                            |
| 4. Surface water quality, quantity and distribution systems |                  |                            |                               |                                      |                            |
| 5. Floodplains and floodplain management                    |                  |                            |                               |                                      |                            |
| 6. Wetlands protection                                      |                  |                            |                               |                                      |                            |
| 7. Terrestrial and avian species and habitats               |                  |                            |                               |                                      |                            |
| 8. Aquatic species and habitat                              |                  |                            |                               |                                      |                            |
| 9. Vegetation quantity, quality and species                 |                  |                            |                               |                                      |                            |
| 10. Unique, threatened or endangered species or habitats    |                  |                            |                               |                                      |                            |
| 11. Unique natural features                                 |                  |                            |                               |                                      |                            |
| 12. Historical and archeological sites                      |                  |                            |                               |                                      |                            |
| 13. Aesthetics, visual quality                              |                  |                            |                               |                                      |                            |
| 14. Energy resources, consumption, and conservation         |                  |                            |                               |                                      |                            |

Comments: (use additional pages if necessary):

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| <b>Impacts to Human Environment</b>                                                                                                                             | <b>No Impact</b> | <b>Potentially Adverse</b> | <b>Potentially Beneficial</b> | <b>Permits or Approval Required</b> | <b>Mitigation Required</b> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|----------------------------|-------------------------------|-------------------------------------|----------------------------|
| 15. Human Health and Safety                                                                                                                                     |                  |                            |                               |                                     |                            |
| 16. Agricultural production (grazing, forestry, cropland)                                                                                                       |                  |                            |                               |                                     |                            |
| 17. Access to recreational activity, public lands, open space                                                                                                   |                  |                            |                               |                                     |                            |
| 18. Nuisances (odor, dust, glare)                                                                                                                               |                  |                            |                               |                                     |                            |
| 19. Noise (e.g. separation between housing and construction areas)                                                                                              |                  |                            |                               |                                     |                            |
| 20. Hazardous substance handling, transportation and disposal                                                                                                   |                  |                            |                               |                                     |                            |
| 21. Local and state tax base and tax revenue                                                                                                                    |                  |                            |                               |                                     |                            |
| 22. Employment, population, or housing                                                                                                                          |                  |                            |                               |                                     |                            |
| 23. Industrial and commercial production                                                                                                                        |                  |                            |                               |                                     |                            |
| 24. Land use compatibility; Consistency with local ordinances, or solutions, or plans                                                                           |                  |                            |                               |                                     |                            |
| 25. Demands for governmental services (e.g. site security, fire protection, community water supply, wastewater or stormwater treatment, solid waste management) |                  |                            |                               |                                     |                            |
| 26. Transportation networks and traffic flow                                                                                                                    |                  |                            |                               |                                     |                            |
| 27. Social structures and mores                                                                                                                                 |                  |                            |                               |                                     |                            |
| 28. Cultural uniqueness and diversity                                                                                                                           |                  |                            |                               |                                     |                            |

Comments: (use additional pages if necessary):

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## **Step 5. Instructions on How to Complete Criteria Statements**

Applicants need to address each applicable criterion in individual criteria statements. **For each criterion, please provide sufficient information about the proposed project that will allow the State to evaluate your proposal as it relates to that specific criterion.**

The criteria that applicants are to address in their criteria statements are generally discussed on the following pages, and specific issues that should be addressed relevant to each criterion are listed. The issues discussed are suggested to help you organize your statement but are not exclusive. The discussion indicates how certain criteria may favor or disfavor a project in the State's overall evaluation. Some overlap of issues may be encountered, and applicants may cross-reference other sections of the application where appropriate to avoid duplication of effort. Additionally, depending on the type of proposal, some of the suggested issues for discussion may not be applicable to a particular proposal. Four of the criteria require information that may not be readily available to applicants. For these four criteria, applicants should describe available pertinent information of which they are aware to assist the State in its evaluation of these criteria.

On your own paper, please follow this format and be sure to address each criterion that is applicable to your proposal:

### **Criteria Statements**

**Applicant Name:** \_\_\_\_\_

**Project Title:** \_\_\_\_\_

1. (insert name of criterion): **[text]**
2. (insert name of criterion): **[text]**  
**(Continue format for all applicable criteria)**

#### **1. TECHNICAL FEASIBILITY**

This criterion is addressed in the technical narrative under Step 3; therefore, no additional response is required here.

#### **2. RELATIONSHIP OF EXPECTED COSTS TO EXPECTED BENEFITS**

This statement should provide information regarding whether a project's costs are commensurate with the benefits it provides. The benefits described should include a discussion of the applicant's view of the project's great importance. The State will evaluate all costs associated with the project, including costs other than those needed simply to implement the project, and the benefits that would result from a project. Application of this criterion is not a straight cost/benefit analysis, nor does it establish a cost-benefit ratio that is by definition

unacceptable. If cost and benefits of the project cannot be quantified, provide a narrative discussion of the cost and benefits.

- A. Describe and, if possible, quantify the direct and indirect costs of the project.
- B. Describe and, if possible, quantify the direct and indirect benefits of the project
  - 1. Describe direct and indirect benefits to injured natural resources located within the vicinity of the Former ASARCO East Helena Smelter.
  - 2. Describe direct and indirect benefits to lost services or replacement services, including any increased public access provided by the proposal. If possible, quantify the number of public users that will benefit from the improvements associated with the proposal.
  - 3. Describe other direct and indirect public benefits.

Benefits and costs of the project are “direct” if they accrue to a targeted group of people and/or the natural resources and services that are affected by the project. “Indirect” benefits and costs accrue to the general public and resources and services that are affected by the project but are not specifically targeted.

- C. Indicate the timeframe over which these identified benefits are expected to accrue.

### **3. COST-EFFECTIVENESS**

This statement should include information regarding whether a particular project accomplishes its goal in the least costly way possible compared to alternatives. In applying this criterion, the State will consider all the benefits and costs associated with a project compared to alternative solutions. The descriptions of each alternative do not have to be as detailed as the description of the proposed project, but enough information must be provided to demonstrate that the alternatives to the project were investigated and that the proposed project provides either greater benefits at the same or similar costs or similar benefits at a lower cost.

- A. Describe the alternatives that will accomplish the same or substantially similar goals as that of the proposed project. These alternatives could accomplish the goals of the proposed project, but in a different way, under a different time frame, or with different costs and benefits. A discussion of a minimum of two to three alternatives is expected. Include the no action alternative (i.e., natural recovery), if applicable; however, in most cases the no action alternative would not accomplish project goals.
- B. Compare the benefits and costs of each of the alternatives and provide justification for the selection of the preferred alternative. Provide any information on the cost-effectiveness of implementation as an Early Restoration action rather than upon completion of the restoration plan. Costs of the alternative approaches should be detailed enough to compare to costs of the preferred alternative provided under Step 6. If you have a project for which such a detailed cost comparison of approaches is not feasible, such as a land acquisition project, then explain such limitations to comparing alternatives.

C. If the alternative selected is not the lowest cost alternative or does not provide the greatest net benefit of the alternatives analyzed, provide the reasons for the selection of this alternative.

D. Identify project matching funds, if any, to be used directly on the selected alternative.

#### **4. ADVERSE ENVIRONMENTAL IMPACTS**

This criterion is addressed under Step 4 in the Environmental Checklist and Narrative; therefore, no additional response is required here.

#### **5. RESULTS OF RCRA/SUPERFUND RESPONSE ACTIONS (Readily Available Information)**

This statement should include a discussion of the results or anticipated results of RCRA/Superfund response actions (defined on p. A-1) underway, or anticipated, in the East Helena NRD Settlement that are relevant to the proposed project. Application of this criterion will require the State to assess, given the inherent uncertainties associated with this task, what response actions it will entail and to make projections as to their effects on resources and services. The State will evaluate what is necessary in the way of restoration of resources and services in light of ongoing and planned response actions and evaluate the degree of consistency between a proposed project and response actions. Projects that duplicate or may duplicate the effects of a response action on natural resources or services will be disfavored. Projects located where the remedial design has not been completed will also be disfavored if a potential exists for the proposed restoration activities to be accomplished under remediation or to interfere with proposed remediation.

Given the multiple response actions underway or anticipated and multiple entities involved in those response actions, it may be difficult to address this criteria. Therefore, applicants are requested to provide readily available information they have on this criterion and the State will collect any necessary additional information.

A. Identify and describe any ongoing and planned response actions of which you are aware that affect or may affect the natural resources or services addressed by your proposal.

B. Describe how the proposal coordinates with ongoing or planned response actions of which you are aware.

1. What steps are included to account for ongoing or planned response actions?
2. Does your proposal augment an ongoing or proposed response action? If so, how?
3. Will implementation of your proposal in any way require that ongoing or proposed response actions be altered?

#### **6. RECOVERY PERIOD AND POTENTIAL FOR NATURAL RECOVERY (Readily Available Information)**

The applicant should evaluate whether the resource and/or services their proposal addresses can recover naturally and estimate how long natural recovery would take. This

analysis will help to place the project's benefits in perspective by comparing the length of time it will take for the resource and/or services to recover if the project were implemented compared to the "No Action-Natural Recovery Period" alternative (defined in Attachment A).

The State recognizes the difficulty some applicants may have in predicting the timeframes for recovery to baseline conditions with the project and without any additional action beyond remedy. Provide time ranges (e.g., 1-10 years vs. 10-50 years vs. 50-100 years, or longer) and identify any uncertainties. Applicants are requested to provide readily available information they have on this criterion and the State will collect any necessary additional information.

- A. Evaluate the potential for natural recovery of the natural resource and/or services addressed by your proposal.
- B. Describe how your proposal would enhance the time frame for natural recovery.

## **7. FEDERAL, STATE, AND TRIBAL POLICIES, RULES AND LAWS (Readily Available Information)**

This criterion entails the State's evaluation of the degree to which the project is consistent with applicable policies of the State, local government, the federal government, and Indian tribes; with applicable laws and rules; and with consent decrees. As part of the evaluation of this criterion, the State will assess whether a project would potentially interfere, overlap, or partially overlap with the restoration work covered under current or planned consent decrees or restoration plans. Because these requirements are extensive, applicants are required only to address the following items in this criteria statement:

- A. Identify any permits or other regulatory approvals that have been obtained and those that must be obtained to complete the project, and include pertinent dates.
- B. Discuss coordination with local entities.
  - 1. What efforts have been made to contact local governmental entities regarding the project?
  - 2. What specific measures will be taken to ensure that the project is coordinated with local governmental activities and complies with local governmental requirements?
  - 3. If your project involves land management activities, explain how you have or will meet the state and local weed management requirements and what efforts you have made or will make to coordinate with the local Weed Control District.
- C. Discuss how the proposal is affected by and is consistent (or inconsistent) with any other applicable laws and rules, policies, or consent decree requirements of which you are aware. If necessary, the State will supplement information provided by applicants.

## **8. NORMAL GOVERNMENT FUNCTIONS**

The East Helena NRD Settlement Restoration Fund will not be used to fund activities for which a government agency (local, state or federal) would normally be responsible or that would

receive funding in the normal course of events. With this criterion, the State will evaluate the likelihood that a particular project would be implemented if recovered natural resource damages were not available. The East Helena NRD Settlement Restoration Fund may be used to augment funds normally available to government agencies if such cost sharing would result in implementation of a restoration project that would not otherwise occur through normal agency function.

- A. Describe what proposed activities, if any, are those for which a governmental agency is legally or otherwise would normally be responsible for, or for which a governmental agency could receive funding in the normal course of events.
- B. If your project augments funds normally available to government agencies, explain why the project cannot be implemented without Restoration funds.

#### **10. PRICE (applies to acquisition projects only (e.g., land, water rights))**

Acquisitions may only be approved when the price to be paid for the property is equal to or less than fair market value. In this criteria statement, explain the basis for the price of the property to be acquired and how it compares to its fair market value. Consideration of this criterion may require the State to conduct its own evaluation or appraisal of the property. For land acquisitions normally an independent appraisal by a qualified appraiser, which complies with the *Uniform Standards of Professional Appraisal Practice*, will be required to verify the property's value.

- A. Explain the basis for the price of the property and how it compares to market value.
- B. Indicate any encumbrances on the property. The determination of encumbrances should be made with the assistance of a title report on the property issued by a title insurance company.
- C. Attach any appraisal documents as well as any other documents or agreements (e.g., title reports, documents evidencing encumbrances on the property, purchase, option, or easement agreements) that are relevant to the project.
- D. Provide documentation of the property owner's commitment to the project, such as a letter. Also, identify any financial relationship that exists between the applicant and the property owner.

#### **Step 6. Proposal Budget**

Complete the **budget estimate forms** and **budget narrative**. Budgets should estimate costs as completely and accurately as possible. Complete these forms on the EXCEL spreadsheets provided with the application. These spreadsheets are available electronically as a separate file from the NRDP website. There are complete example budgets also available on the website. Complete the Budget Detail Form first. The numbers from this form will be carried over to the Budget Summary Form. The tasks indicated in the budget sheets should match the tasks outlined in the Technical Narrative (Step 4).

The State will only reimburse costs that relate directly to the proposed project and that would only be incurred if the project were to be implemented. The Budget Summary Form and Budget Detail Form include major expense categories.

## **A. BUDGET ESTIMATE**

Use the attached Budget Summary Form and Budget Detail Form to complete your budget estimate. Information regarding the following expense categories should be included in your budget estimate. **Submit both the Budget Summary Form and Budget Detail Form in your applications.** If your project is a multi-year project, costs must be broken down by year.

1. **Salaries and Wages** – Identify each employee required to complete the project. List all participants by name and position, or by position only if not yet hired. List the estimated number of hours each employee will work and the hourly wage rate. Include in this category clerical, bookkeeping, and other support staff services that would be reimbursed by East Helena NRD Settlement Restoration Funds.
2. **Employee Benefits** – Enter the employee benefits to be paid and the rate or method by which they were calculated.
3. **Administrative Fees, Overhead, or Indirect Fees** – Preferably, any administrative costs, such as those incurred to handle project financial accounting, reporting, and contracting matters, should be charged as a direct, project-specific labor cost based on actual time spent that is logged and documented via time sheets, rather than on a percentage fee basis. If your project includes an administrative fee that is based on a certain percentage of total project costs, identify that fee and specify what costs/services are covered under that overhead and provide backup documentation on the validity of this fee, such as an audit of the fee. For overhead or indirect costs, include an explanation for how these costs are charged on a project-specific basis and provide backup on the validity of these fees.
4. **Contracted Services** – Identify any services to be provided by others hired under contract for professional services or construction. This category includes, but is not limited to, consultant and construction services, materials, equipment, data processing, printing, and laboratory testing. List each specific service to be performed and the wage rate associated with it.

Design/Contingency Costs for projects involving construction: Construction service contracts should include a contingency to cover unexpected expenses. Applicants for these projects should research current market trends for construction materials and labor and adjust costs appropriately. Provide documentation for the choice of contingency rate, which should not exceed 20%. Many fixed cost items do not need a contingency applied to them. Also specifically identify the engineering design costs for construction type projects. Engineering design costs can be based on an estimated level of effort by project engineers or estimated based on a percentage of construction costs. For projects that have standard designs, an engineering design cost of no more than 10% is suggested. For

projects that do not have standard engineering designs, a design cost of no more than 15% is suggested.

5. **Supplies and Materials** – List major office supplies and materials necessary to prepare, conduct, or construct this project. These items are generally consumable commodities purchased for inventory or immediate use by the applicant and cost less than \$250. List the costs of all major items.
6. **Communications** – Include telephone, postage, mailing, and advertising costs in this category.
7. **Travel** – List only costs for travel that is essential to conduct the project. Detail the expected travel destination, the purpose of the travel, the number of people traveling, and the number of trips to be made. Travel rates may not exceed the current state employee rates for meals, lodging, and mileage.
8. **Rent and Utilities** – List the terms and costs specific to the project that are associated with buying or renting office space, storage, computer rental, other office equipment use, additional project space requirements, and applicable utility expenses. Include an explanation of the methodology for how these costs are charged on a project-specific basis.
9. **Equipment** – Include in this category articles leased or purchased for use on the project by the applicant. These items generally are of a non-consumable nature, have an estimated life of more than one year, and cost greater than \$500. List all necessary items and their costs. The NRDP has an equipment policy that is available on NRDP website or upon request by NRDP.
10. **Miscellaneous** – Identify any other costs required to complete the project. List any other project costs, such as repairs or maintenance, that have not been addressed in other budget categories. The State will not pay interest on loans taken out to cover project expenses. Explain the basis for any contingency costs, beyond the contingency costs associated with construction projects, which is to be addressed under item # 4.

## **B. BUDGET NARRATIVE**

The budget narrative must clearly demonstrate that the project can be completed within the proposed budget. To accomplish this goal, address the following issues.

1. Provide a general discussion of the spending plan, and explain each budget item in relation to the total budget.
2. The budget narrative should clearly state the assumptions used to develop the proposed budget.
3. Include the sources of all cost estimates in the budget narrative.
4. Justify project expenditures reported on the budget forms.
5. Describe the basis for your computations.
6. Describe what contingencies exist for cost-overruns, such as construction contingencies.

7. Indicate what mechanisms of financial assurance, such as letters of credit or performance bonds, have been or will be obtained.

**Matching Funds:** The budget forms should indicate the cash and in-kind matching funds and the budget narrative should describe your efforts toward securing those funding commitments. The State will calculate the cash and in-kind matching fund contributions separately by determining the percentage of the total project costs for activities under the project’s scope of work to be funded by cash or in-kind contributions from other sources besides Restoration Funds. If a project is approved, the applicant is obligated to contribute the indicated matching fund amount to the project. Please address the following issues:

1. If you applied to other funding agencies, give the date of your application, the date a funding decision is expected, and whether you requested a grant or a loan. Provide documentation.
2. Provide verification of committed matching funds, such as an award letter.
3. Indicate whether the matching funds are cash or in-kind contributions.
  - Cash contributions are project-specific contributions provided by an individual or organization for which documentation can be provided of a cash transaction by the applicant, project sponsors, or partners.
  - In-kind contributions are project-specific contributions of a service or a product provided by an individual or organization where the cost cannot be tracked back to a cash transaction by the applicant, project sponsors, or partners. Examples of in-kind expenses include donated labor and equipment.
4. Identify any loans used as matching funds and indicate the planned mechanism to pay back the loans.

If the project will require funding beyond the period for which funds are requested, include a plan describing how subsequent funds will be obtained.

Please use the following format in presenting your Budget Narrative on your own paper:

## **Budget Narrative**

**Applicant Name:** \_\_\_\_\_

**Project Title:** \_\_\_\_\_

[text]

| Application                        |                                                  | BUDGET DETAIL FORM     |                |         |          |       |
|------------------------------------|--------------------------------------------------|------------------------|----------------|---------|----------|-------|
| EXPENSE CATEGORY                   |                                                  | UCFRB RESTORATION FUND | MATCHING FUNDS |         |          | TOTAL |
|                                    |                                                  |                        | Cash           | In-Kind | Subtotal |       |
| 1                                  | SALARIES AND WAGES<br>(List all worker salaries) |                        |                |         |          |       |
|                                    | Insert Row                                       |                        |                |         |          |       |
|                                    | SALARIES AND WAGES<br>SUBTOTAL                   |                        |                |         |          |       |
| 2                                  | FRINGE BENEFITS                                  |                        |                |         |          |       |
|                                    | Insert Row                                       |                        |                |         |          |       |
|                                    | FRINGE BENEFITS<br>SUBTOTAL                      |                        |                |         |          |       |
| 3                                  | CONTRACTED SERVICES<br>(LIST BY TYPE)            |                        |                |         |          |       |
|                                    | Insert Row                                       |                        |                |         |          |       |
|                                    | CONTRACTED SERVICES<br>SUBTOTAL                  |                        |                |         |          |       |
| 4                                  | SUPPLIES AND MATERIALS                           |                        |                |         |          |       |
|                                    | Insert Row                                       |                        |                |         |          |       |
|                                    | SUPPLIES AND MATERIALS<br>SUBTOTAL               |                        |                |         |          |       |
| 5                                  | COMMUNICATIONS                                   |                        |                |         |          |       |
|                                    | Insert Row                                       |                        |                |         |          |       |
|                                    | COMMUNICATIONS<br>SUBTOTAL                       |                        |                |         |          |       |
| 6                                  | TRAVEL                                           |                        |                |         |          |       |
|                                    | Insert Row                                       |                        |                |         |          |       |
|                                    | TRAVEL SUBTOTAL                                  |                        |                |         |          |       |
| 7                                  | RENT AND UTILITIES                               |                        |                |         |          |       |
|                                    | Insert Row                                       |                        |                |         |          |       |
|                                    | RENT AND UTILITIES<br>SUBTOTAL                   |                        |                |         |          |       |
| 8                                  | EQUIPMENT                                        |                        |                |         |          |       |
|                                    | Insert Row                                       |                        |                |         |          |       |
|                                    | EQUIPMENT SUBTOTAL                               |                        |                |         |          |       |
| 9                                  | MISCELLANEOUS                                    |                        |                |         |          |       |
|                                    | Insert Row                                       |                        |                |         |          |       |
|                                    | MISCELLANEOUS<br>SUBTOTAL                        |                        |                |         |          |       |
| <b>ALL CATEGORIES<br/>SUBTOTAL</b> |                                                  |                        |                |         |          |       |

| Application      |                        | BUDGET SUMMARY FORM                                     |                |         |          |       |
|------------------|------------------------|---------------------------------------------------------|----------------|---------|----------|-------|
| EXPENSE CATEGORY |                        | EAST HELENA<br>NRD<br>SETTLEMENT<br>RESTORATION<br>FUND | MATCHING FUNDS |         |          | TOTAL |
|                  |                        |                                                         | Cash           | In-Kind | Subtotal |       |
| 1                | SALARIES AND WAGES     |                                                         |                |         |          |       |
| 2                | FRINGE BENEFITS        |                                                         |                |         |          |       |
| 3                | CONTRACTED SERVICES    |                                                         |                |         |          |       |
| 4                | SUPPLIES AND MATERIALS |                                                         |                |         |          |       |
| 5                | COMMUNICATIONS         |                                                         |                |         |          |       |
| 6                | TRAVEL                 |                                                         |                |         |          |       |
| 7                | RENT AND UTILITIES     |                                                         |                |         |          |       |
| 8                | EQUIPMENT              |                                                         |                |         |          |       |
| 9                | MISCELLANEOUS          |                                                         |                |         |          |       |
| TOTAL            |                        |                                                         |                |         |          |       |

In electronic form this spreadsheet will automatically calculate the expense totals from the Budget Detail Form.

# SUPPLEMENTAL GUIDANCE

## ATTACHMENT A

### DEFINITIONS

The short definitions that follow are intended to help applicants identify the types of projects that will restore, rehabilitate, replace, and/or acquire the equivalent of injured natural resources and/or lost services.

**Natural Resources:** “Natural resources” that may be addressed using the East Helena NRD Settlement Restoration Fund include the land, fish, wildlife, biota, air, surface water, ground water, and other resources that: 1) are owned by or held in trust, managed or controlled by the State of Montana; 2) have been injured from exposure to or contact with hazardous substances generated by ASARCO’s mineral processing and smelting operations at the East Helena Smelter site.

**Services:** “Services” are the physical and biological functions, including the human use of those functions, performed by the natural resource, or that would have been performed by the natural resource had it not been injured by the release of hazardous substances. A service provided by an injured natural resource, or that would have been provided absent the injury to the natural resource, may also be addressed using East Helena NRD Settlement Restoration Fund. Services include ecological services such as flood control and erosion control, habitat, and food chains, as well as human services such as recreation and drinking water consumption.

**Injury:** “Injury” to a natural resource is the measurable adverse change in the chemical, physical, or biological quality or the viability of a natural resource resulting from exposure to a release of a hazardous substance.

**Baseline:** “Baseline” refers to the condition of a natural resource and the services it provided that would have existed had the discharge of the hazardous substance not occurred.

**No Action-Natural Recovery Period:** “No Action-Natural Recovery Period” refers to the time needed for recovery of an injured resource to baseline conditions if no restoration efforts are undertaken beyond response actions. This time period depends on many factors, including the extent of the injury, the persistence in the environment of the hazardous substance to which the natural resource is exposed, and the extent of response actions or other human intervention.

**Response or Corrective Actions:** “Response or Corrective actions” are those measures undertaken by the U.S. Environmental Protection Agency or the State of Montana at contaminated sites that are deemed necessary to protect the public health or welfare or the environment from continued or further harm. Response or corrective actions at the East Helena Smelter site may also restore natural resources.

**Restoration:** The term “restoration” is used in both a general sense and specific sense in this document. Used in a general sense, “restoration” generally refers to the four types of actions authorized under state and federal law to address injuries to natural resources (i.e., restoration, rehabilitation, replacement, and acquisition of the equivalent natural resources). Used in the

specific sense, “restoration” refers to actions that operate directly on the injured resources and services to return them to baseline conditions or to accelerate the recovery process. For example, in a situation where numerous sources are contaminating groundwater, removing the most significant sources would lessen the injury and result in the groundwater’s recovery, or “restoration,” to baseline sooner than would otherwise occur.

**Rehabilitation:** Actions constituting “rehabilitation” attempt to return the injured resources and services to a state different than their baseline condition, but still beneficial to the environment and the public. For example, where injury to a conifer forest resulted in a loss of upland big game habitat, planting grasses and shrubs would create upland bird habitat while only beginning the process of restoring upland big game habitat.

**Replacement:** Actions constituting “replacement” seek to create or enhance resources and services equivalent or very similar to those that have been injured, but away from the immediate site of the injury. For example, where an injury to a trout fishery has occurred, improvements to a nearby stream would enhance its trout fishery and would, in effect, constitute “replacement” of the injured fishery.

**Acquisition of Equivalent Resources:** Actions constituting “acquisition of equivalent resources” involve acquiring unimpaired resources comparable to those that are injured. Acquisition of equivalent resources can hasten recovery or protect the injured natural resources. For example, acquiring healthy land adjacent to injured land can relieve pressure on the injured land and hasten its recovery. Or acquisition of equivalent resources may compensate the public for its diminished ability to use the injured resources. For example, although acquiring unimpaired land for public use does not restore the land that has been injured, it does make other land available for public use.

**Public Comments on the  
2005 Big Butte Grant  
Amendment**



**East Helena Proposed Process for Early Restoration, East Helena  
Natural Resource Damage Site  
Public Comment**

Public comments solicited for the East Helena Proposed Process for Early Restoration, East Helena Natural Resource Damage site. A 30-day public comment period closed on May 31, 2013. The four comments received are listed below. NRDP is currently preparing a responsive summary to these comments.

**Comment #1**

I've attached a pic of a Brown trout I caught on the PP btw Ashgrove and Kleffner. It was 17" – so there are nice fish in the PP and any effort to improve fish habitat, especially so close to home, is a real plus.

Michael McNamara

**Comment #2**

I just wanted to drop a note of support for your efforts with Prickly Pear Creek. My kids like to fish some of the creek near us in Mt. City. I work as a fishing and hunting guide, and having a creek that my kids can ride their bikes to, too fish is the way it should be. When I first moved to the area I worked for the Burnham ranch and spent many hours in and around the creek. After seeing all the mining along its upper reaches and channeling and agriculture there was, I didn't think there was much hope there might be fish. While I was irrigating one evening I could hardly believe my eyes when adjusting the headgate on the creek. Ther was a caddis hatch going on and fish feeding. I found Salmon flies and Golden stone fly nymphs. I always felt it a shame what happened to that creek. Then to see that it was still hanging was amazing. I know it probably won't ever be what it used to be, but it can be better. I would like to help feel free to contact me. I can give a little money or offer three or four vole meters.

David Meador

**Comment #3**

Rob – Thank you for the opportunity to review and comment on the East Helena NRD Settlement Fund Early Restoration Proposal. EPA, as the Lead Agency under the 2009 Settlement Agreement for cleanup of the former ASARCO East Helena Designated Property, was encouraged by the establishment of a funding mechanism for early restoration in East Helena, and is committed to cooperating and coordinating with the Montana Department of Justice Natural Resource Damage (NRD) Program during implementation of restoration projects within East Helena and specifically on properties held by the Montana Custodial Trust for the United States and the State of Montana, as beneficiaries. As Project Manager for the East Helena CERCLA and RCRA remediation work, I am submitting the following comments and requests:

1. The introduction to the document states that, “ASARCO conveyed an option to the State to acquire 232 acres of ASARCO-owned land in the East Helena area”. I have checked with the Trust and I do not believe that they have documentation of the conveyance – can you provide copies of the legal documentation to the Montana Custodial Trust and the United States (US DOJ and EPA)?
2. Generally, a Restoration Plan is prepared prior to spending NRD funds – the State has not prepared a Restoration Plan for East Helena, and I was wondering if the expenditure of money received from the court must be used on the natural resource that was the subject of the claim.
3. The introduction states, “to be funded, Early Restoration Projects must restore or substantially improve or replace the **RELEVANT INJURED NATURAL RESOURCES**” – there is no definition within the document or in Attachment A, of what the “relevant natural resource” is.
4. The document states that, “Early Restoration Proposals” must be located within the vicinity of the former ASARCO smelter site and must be time critical, or of great importance, and capable of being implemented within 24 months of funding approval” – there are no definitions within the document or in Attachment A, for vicinity, time critical or of great importance.
5. There is a conflict between page 1 and pages 3 & 4 on the limit of funding – page 1 states \$100,000 and pages 3 & 4 state \$75,000. Please clarify which is correct.
6. On page 19, section 5, the application requires the applicant to include a discussion on the RCRA/Superfund response actions – there is no mention of consultation with EPA, as the Lead Agency, other beneficiaries, or the METG. Is NRD contemplating establishing a committee for the review of proposed projects and establishments of a Restoration Plan?
7. On page 20, section 7, the second paragraph states, “As part of the evaluation of this criterion, the State will assess whether a project would potentially interfere, overlap, or partially overlap with the **RESTORATION WORK** covered under current or planned consent decrees or restoration plan”. I do not understand this sentence as there is not a Restoration Plan in place that any of the projects could be in conflict with. The text should probably read instead, “As part of the evaluation of this criterion, the State will assess whether a project would potentially interfere, overlap, or partially overlap with the **REMEDIATION** or **CORRECTIVE ACTION** covered under current or planned consent decrees or **RESTORATION WORK** covered under the Restoration Plan.”

Again, thank you for the opportunity to participate in this process. EPA is looking forward to integrating planned restoration into the ongoing implementation of the RCRA Corrective Action. If you have any questions or concerns regarding my comments, please feel free to contact me or Joe Vranka.

*Betsy Burns, RCRA Project Manager  
EPA Region 8, Montana Office  
10 West 15th St., Suite 3200  
Helena, MT 59626  
(406) 457-5013, Toll Free w/in Region 8 states 1-866-457-2690*



Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust  
PO Box 1230, East Helena, Montana 59635  
Telephone (1): (617) 448-9762  
Telephone (2): (406) 227-4098

By Electronic Mail

May 31, 2013

Rob Collins  
State of Montana  
Natural Resource Damage Program  
1301 E. Lockey Avenue  
P.O. Box 201425  
Helena, MT 59620-1425

Dear Rob:

The Montana Environmental Trust Group, LLC, Trustee of the Montana Environmental Custodial Trust (the Custodial Trust), respectfully submits the following comments on the, "East Helena NRD Settlement Fund (08231), Early Restoration Proposals," (the NRD Proposal) issued by the Montana Department of Justice (MDOJ).

General Comments.

The Custodial Trust applauds MDOJ's proposal to fund early restoration of natural resources utilizing the State of Montana's East Helena Natural Resource Damages (NRD) Settlement Fund (the State NRD Fund). Such early planning can help expedite the restoration of natural resources that have been lost or injured by more than a century of industrial operations at the former Asarco smelter in East Helena (the Site). More specifically, the Custodial Trust encourages MDOJ to authorize funding for early restoration projects that will enhance the expected environmental benefits associated with the Custodial Trust's ongoing and planned corrective measures at the Site under the Resource Conservation and Recovery Act (RCRA). The interim measures (IMs), including South Plant Hydraulic Control (SPHC) IM, will not only reduce the mass loading of contaminants to groundwater and the volume of contaminated groundwater leaving the Site, they will also contribute to the natural resource value of the Prickly Pear Creek (PPC) corridor and its associated wetlands. By incorporating early restoration planning into the design and permitting of the PPC realignment project currently underway, provisions for enhanced habitat, public access areas and recreational features can be

efficiently funded and included in the IM design and construction activities. Because PPC realignment design and permitting are being actively pursued, early restoration proposals that focus on natural resource enhancements able to be implemented as part of the PPC realignment effort would meet MDOJ's requirement of time critical projects that can be implemented within twenty-four months of MDOJ funding approval. In summary, the Custodial Trust strongly encourages and supports MDOJ's proposal to begin early restoration activities at the East Helena Site, especially projects that can be integrated into the IMs being implemented at the Site.

#### Specific Comments.

The Custodial Trust also has the following specific comments and questions on the NRD Proposal.

#### 1. Introduction to the NRD Proposal

- a. Page 1 of the Introduction to the NRD Proposal states that, *"As part of that settlement, ASARCO separately paid approximately \$5.9 million to the State for restoration of natural resources in the East Helena area to settle the State's compensatory NRD claims, plus ASARCO conveyed an option to the State to acquire 232 acres of ASARCO-owned land in the East Helena area to be used for wildlife habitat restoration, recreation and open space."* When title to the Asarco property in East Helena was conveyed to the Custodial Trust in 2009, there was no documentation appearing on record title to the former Asarco property that the State received a possessory or other interest in the 232 acres, commonly referred to the "State's Claim." The Custodial Trust would therefore appreciate receipt of the conveyance instrument(s) so that it can be properly recorded. If the State's Claim has not be formally conveyed, the Custodial Trust will need to secure the written approval of the USEPA and the State to effect that transfer pursuant to Section 10 of the Consent Decree and Settlement Agreement Regarding the Montana Sites (the Settlement Agreement). Specifically, Section 10 states that, *"the United States, the State, or a local governmental unit that is a designee of the State, may at any time, propose in writing to take ownership, without further consideration, of any of the Montana Designated Properties or any part thereof...[and that] Any such proposed transfer and the terms thereof are subject to approval in writing by US EPA and the State with respect to the East Helena Designated Property."*
- b. Page 1 of the Introduction states that, *"These restoration funds are in addition to the approximate \$115 million paid by ASARCO to clean up and restore the former ASARCO Smelter site and other contaminated lands in the East Helena area."* The Custodial Trust assumes that the \$115 million paid by Asarco includes the

- funds deposited directly with EPA for remediation of un-owned properties under CERCLA as well as the funds set aside for Natural Resource Damages at the East Helena Designated Property, which are currently held by the Custodial Trust for the benefit of the US Department of Interior. The Custodial Trust received total funding in the amount of \$96,334,525 for the East Helena Cleanup Account, which was reduced from \$99,294,000 because of credits awarded to Asarco for certain work performed by the Debtor in 2009.
- c. Page 1 of the Introduction states that the, *“Federal NRD regulations provide that prior to spending NRD funds, a state must prepare a comprehensive restoration plan that provides for the expenditure of such funds on appropriate projects that would restore, rehabilitate or replace the injured or lost natural resources that were subject to the NRD claim.”* It might be helpful to individuals and/or organizations that wish to submit early restoration proposals if MDOJ included background information about the injured natural resources and/or lost services that formed the basis for the State’s NRD claim in East Helena.
  2. Section 1 of the NRD Proposal: Subparagraph 5 of Section 1 of the NRD Proposal (on page 5) states that, *“The project will not potentially interfere, overlap, or partially overlap with the remediation or restoration work provided for or planned under existing or anticipated consent decrees, Record of Decisions, Work Plans, or restoration plan.”* The Custodial Trust encourages MDOJ to authorize proposals that allow for overlap with the RCRA cleanup activities so that NRD restoration can be integrated into SPHC IM, including realignment of PPC.
  3. Section 2 of the NRD Proposal. Subparagraph D.5 of Section 2 of the NRD Proposal (on page 11) states that the application must, *“Identify any permits, regulatory approvals, or property access agreements that have been obtained or will be needed to complete the project. If you propose work on private land that will cause ground disturbance, provide an updated property ownership map and documentation of the landowner’s consent to the proposed work that would disturb private land.”* As the owner of record, the Custodial Trust has not been contacted to date by anyone seeking Custodial Trust consent to access its property in East Helena. Please note that, assuming that any such access would not adversely effect IM construction activities and subject to receipt of the required insurance coverages and releases of liability, the Custodial Trust would be happy to cooperate with an MDOJ-selected recipient of early restoration funding to grant such access.
  4. Section 2 of the NRD Proposal. Subparagraph D.7.a of Section 2 of the NRD Proposal (on page 12) states that, *“If the work will occur on private land, explain what*

*measures will be used to assure that future land management activities will not disrupt areas that will be restored and/or diminish the projects benefits. Include documentation of the current landowner's commitment to conduct these measures."*

Subject to the conditions and assumptions described in Paragraph 3 above, the Custodial Trust would be willing to cooperate with an MDOJ-selected recipient of early restoration funding to coordinate long-term operation and maintenance (O&M) activities for the IMs and the restoration initiatives.

5. Section 5 of the NRD Proposal. Section 5 of the NRD Proposal (on page 19) requires submissions that include, *"a discussion of the results or anticipated results of RCRA/Superfund response actions (defined on p. A-1) underway, or anticipated, in the East Helena NRD Settlement that are relevant to the proposed project. Application of this criterion will require the State to assess, given the inherent uncertainties associated with this task, what response actions it will entail and to make projections as to their effects on resources and services. The State will evaluate what is necessary in the way of restoration of resources and services in light of ongoing and planned response actions and evaluate the degree of consistency between a proposed project and response actions. Projects that duplicate or may duplicate the effects of a response action on natural resources or services will be disfavored. Projects located where the remedial design has not been completed will also be disfavored if a potential exists for the proposed restoration activities to be accomplished under remediation or to interfere with proposed remediation."* The Custodial Trust respectfully suggests that early restoration proposals that can be integrated in to the IMs would be in the best interest of the beneficiaries of the Custodial Trust, including the State of Montana, as well as the community of East Helena.
6. Supplemental Guidance (Attachment A). Attachment A states that *"Natural Resources" that may be addressed using the East Helena NRD Settlement Restoration Fund include the land, fish, wildlife, biota, air, surface water, ground water, and other resources that: 1) are owned by or held in trust, managed or controlled by the State of Montana; 2) have been injured from exposure to or contact with hazardous substances generated by Asarco's mineral processing and smelting operations at the East Helena site."* It might be helpful to clarify whether such Natural Resources must be: both owned by the State **and** injured by Asarco's operations; **or** either owned by the State **or** injured by Asarco's activities.

The Custodial Trust appreciates MDOJ's consideration of these comments and looks forward to working with MDOJ and all other stakeholders on the cleanup, restoration and revitalization of the East Helena Site.

Please do not hesitate to contact me if you have any questions pertaining to this transmittal.

Sincerely,

Montana Environmental Trust Group, LLC  
Trustee of the Montana Environmental Custodial Trust  
By: Greenfield Environmental Trust Group, Inc., Member  
By: Cynthia Brooks, President

cc: Betsy Burns—US EPA  
Mary Capdeville—MDOJ  
Julie DalSoglio—USEPA  
Chuck Figur—USEPA  
Jim Ford—Custodial Trust  
Lauri Gorton—Custodial Trust  
Doug Martin—MDOJ  
Greg Mullen—MDOJ  
Karen Nelson—USFWS  
Elliot Rockler—USDOJ  
Alan Tenenbaum—USDOJ  
Joe Vranka—US EPA  
Marc Weinreich—Custodial Trust