

**Upper Clark Fork River Basin Trustee Restoration Council  
Long Range Restoration Priorities and Fund Allocation Guidance Plan<sup>1</sup>  
(11/8/11 Proposed Final for Consideration of the Governor)**

• **Upper Clark Fork River Basin Restoration Priorities and Fund Allocations**

Based on the definitions set forth in the UCFRB Restoration Plan Procedures and Criteria document, the three primary categories of injuries to natural resources and to the services they provide are set forth as follows:

1. Groundwater resources and the “[s]ervices provided to human beings by groundwater, including domestic and industrial consumption and use, irrigation, and waste disposal and assimilation.”
2. Terrestrial resources and the “[s]ervices provided by soils, vegetation, wildlife habitat, and wildlife, including the many activities that revolve around them, such as hunting, bird watching, wildlife photography, hiking, and general recreation.”
3. Aquatic resources and the “[s]ervices provided by surface water and aquatic resources, including such activities as fishing, hunting, floating, and general recreation.”

The Upper Clark Fork River Basin Restoration Fund to be allocated among the three resource categories is the settlement corpus of \$108 million plus interest that has accrued to the corpus since April 6, 1998 (Attachment A). Funds for all past approved projects are categorized on Attachment C and included in the percentages of funds allocated to each category of restoration project described below.

Based on the claims made in the 1983 Natural Resource Damage lawsuit (*State of Montana v. ARCO*) and in the settlement of those claims through the 1999 Consent Decree, the Council therefore recommends adoption of the following restoration and funding allocation percentages (Attachment D):

- 36% for injuries to groundwater and groundwater services,
- 39% for injuries to aquatic resources and aquatic services, and
- 25% for injuries to terrestrial resources and terrestrial services.

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<sup>1</sup> This document is, in large part, based on the 12/15/10 “Resolution by the Upper Clark Fork River Basin Remediation and Restoration 2010 Advisory Council for Adoption of a Long Range Restoration Priorities and Fund Allocation Guidance Plan.”

- **Groundwater restoration funding process**

Because the loss of services resulting from the permanent injuries to the Butte Hill and Anaconda area groundwater resources cannot be restored under any known and practical, technically feasible method, the Council recognizes that the restoration of lost groundwater services will have to occur through the replacement of these lost groundwater resources and services.

The Council recommends that future funding for groundwater restoration be divided between Butte-Silver Bow and Anaconda-Deer Lodge Counties according to the following percentages – Butte-Silver Bow 75% and Anaconda-Deer Lodge 25%.

To implement future funding for groundwater resources, the Council recommends that NRDP staff develop for Advisory Council and Trustee Council consideration and Trustee approval a stream-lined, non-grant process for the approval and implementation of future water system improvement projects. The Council intends that this process entail each local government develop for itself and submit to Natural Resource Damage Program staff a detailed proposal for how and when they would spend their allocations over a period not to exceed 20 years on water-system improvement projects consistent with the priorities set forth in their respective master plans.

This proposal is based upon the plans and priorities articulated in the Butte-Silver Bow and Anaconda-Deer Lodge water system master plans approved in compliance with all applicable federal and state laws.

The Counties would then implement their proposal following consideration by the NRDP, the Advisory Council, the Trustee Restoration Council, and the general public, and final approval by the Trustee. Implementation would include necessary oversight and review by NRDP, with funds distributed on a reimbursement basis.

- **Aquatic and terrestrial restoration funding process**

The Council recommends that future aquatic and terrestrial projects be proposed, reviewed, and funded subject to similar review steps as presently exist (i.e. consideration by the NRDP, Advisory Council, Trustee Restoration Council, and the general public, and final approval by the Trustee). The Council recognizes that NRDP staff will develop, within 2 months' time of the approval of this plan by the Trustee, a more specific planning process for Trustee consideration and approval that may include additional policies and practices deemed necessary to develop restoration plans for aquatic and terrestrial resources and to fully comply with federal and state law regarding restoration planning.

Within these two categories, funding decisions and priorities should be guided by sound scientific information including, but not limited to, the comprehensive agency planning

documents that are being developed and any subsequent updates and revisions: a) the Tributary Prioritization Plan developed by the Department of Fish, Wildlife & Parks and NRDP (2010), after public comment and recommendation by the Advisory Council and the Trustee Restoration Council and final approval by the Governor, and b) the Terrestrial Wildlife Resource Prioritization Plan developed by the Department of Fish, Wildlife & Parks and NRDP (2010), after public comment and recommendation by the Advisory Council and the Trustee Restoration Council and final approval by the Governor. In addition to the priority areas identified in the above-referenced plans, all of the aquatic and terrestrial injured resource areas from Butte to and including Milltown for which the State made restoration claims are also considered priority areas that are also eligible for allocation of the aquatic and terrestrial priority funds.

Further, 15% of the funds allocated to the aquatic and terrestrial restoration categories shall be set aside as a reserve fund and will be ineligible for expenditure until such time as aquatic and terrestrial priority funds have been exhausted.

Up to a maximum additional \$8 million will be encumbered and dedicated to the Silver Bow Creek Greenway project to fund restoration activities that include ecological and recreational access features to be completed in coordination with remediation activities. This set-aside is indicated under the “Encumbered UCFRB RFs” and will be initially funded out of the UCFRB RF, which shall be paid back to the UCFRB RF from the Silver Bow Creek Reserve Remediation Reserve, referenced herein and shown in Attachment D, when and if it becomes available.

- **Funding recreational projects**

With respect to aquatic and terrestrial recreational services, the Council recommends that recreational projects aimed at providing the recreational services that were the subject of *State of Montana vs. ARCO* be considered for funding from the aquatic or terrestrial resource allocation funds only if such projects are located in the aquatic and terrestrial injured resource areas for which the State made restoration claims or in the priority areas identified in the State’s aquatic and terrestrial priority plans referenced above and only if such projects offer additional natural resource restoration benefits and not just recreational benefits. Such projects, which provide replacement of lost recreational services and additional natural resource benefits, are allowable restoration activities and funding of them would come from the either aquatic or terrestrial funds based on the proportion of the project costs attributable to aquatic or terrestrial restoration.

- **Funding educational projects**

The Council supports education specific to the restoration of injured resources in the Upper Clark Fork River Basin and recommends that future education funding be confined to the Clark Fork Watershed Education Program. The Council recommends funding this with administrative NRDP funds, with the budget considered by the NRDP and Advisory Council and approved by

the Trustee Restoration Council on a biennial basis in each even numbered year. This recognizes CFWEP's long-term sustainability goal that emphasizes incorporation of educational materials into school curriculums. Education costs would be divided proportionately by resource category as indicated above (36% groundwater, 39% aquatic, and 25% terrestrial).

Educational signage related to restoration of natural resources in the Basin would be an eligible component of the aquatic, terrestrial, or recreational projects that are eligible for funding under this Plan.

- **SSTOU Remediation Fund Reminders (commonly referred to as Silver Bow Creek)**

The Council recommends that in the future, should there be any unexpended money from the SSTOU/SBC remediation fund, that it be returned to the general Upper Clark Fork River Basin Restoration Fund and allocated to a reserve fund for specific projects to be determined based on the overall status of the restoration of resources and services within the Upper Clark Fork River drainage at and above Deer Lodge, with the Cottonwood Creek drainage being the northern boundary, including Silver Bow Creek and Warm Springs Creek drainages. Future distribution from this reserve of restoration funds should be designated for additional, unfunded, restoration of aquatic and terrestrial resources in these upstream areas, keeping in mind the allocation priorities set forth herein and, particularly, the Prioritization Plans, and the recognition that the UCFRB areas at and upstream of Deer Lodge are the most severely injured.

- **Administrative costs**

For costs specific to the UCFRB Restoration Fund, the Council recommends that NRDP administrative costs specific to a resource category be funded out of the money that has been allocated to that category, or, in the case of general costs that are not specific to a resource category, be divided among the three allocation categories according to the percentage identified above. For example, the NRDP's costs in reviewing the county proposals and reviewing invoices for approved groundwater projects would come from the 36% of funds allocated for groundwater restoration, with a similar allocation for aquatic or terrestrial review work from the aquatic and terrestrial percentages of allocated funds, respectively. General costs would be divided, with 36% to the groundwater allocation, 39% to the aquatic allocation, and 25% to the terrestrial allocation.

The NRDP will prepare and present a biennial budget for administration costs associated with this guidance plan to the Trustee for approval in each even numbered year.

- **Monitoring and Maintenance**

Projects funded through the funds allocated for groundwater, aquatic, or terrestrial resource restoration will have project-specific monitoring and maintenance needs. Any needed

monitoring at a broader, programmatic level can be charged to the appropriate resource allocation category.

- **Time Frame**

Due to the extent and severity of the injury to resources and services of the Basin and the critical need now to guide present and future expenditures from the Upper Clark Fork River Basin Restoration Fund, The Restoration Priorities and Fund Allocation Guidance Plan set forth herein should govern all expenditures from this Fund from this point forward and is expected to continue for the next twenty (20) years.

However, the Trustee Restoration Council recognizes the need to continue restoring lost aquatic and terrestrial resources and therefore will entertain early restoration proposals during calendar year 2012. Such early restoration proposals must be located in the aquatic and terrestrial injured resource areas for which the State made restoration claims or in the priority areas identified in the State's aquatic and terrestrial priority plans referenced above. After this date, funding for restoration proposals will be guided solely by a more specific restoration plan which will be prepared by NRDP staff and that will develop, evaluate, and make recommendations for future funding of projects and programs to fulfill the requirements of federal and state law. That more specific plan will be considered and recommended by the Advisory Council and the Trustee Restoration Council, after comment and input from the public, and then, if acceptable, approved by the Governor.

A review of expenditures and projects to ensure accountability and efficient and effective use of the Upper Clark Fork River Basin Restoration Fund should be conducted at least every five years. Such a review should include an evaluation of the timing of remedy and restoration.

**Attachments used as basis for this document**

Attachment A = UCFRB Restoration Fund Status

Attachment B = Deleted during review process

Attachment C=UCFRB Restoration Funds Granted and Proposed

Attachment D= UCFRB Funding Flow Chart

## Attachment A

<b>1st Quarter FY12 UCFRB Restoration Fund Summary</b>			
<b>As of 10/1/11</b>			
		<b>Book Value</b>	<b>Market Value</b>
A	FYE11 Fund Balance	\$138,019,768.44	\$147,404,341.41
B	FY12 Interest (as of 10/1/11)	\$1,373,587.06	\$1,373,587.06
C	FY12 Expenses (as of 10/1/11)	(\$1,018,224.00)	(\$1,018,224.00)
D	FY12 Market Adjustment	Not Applicable	Done at Fiscal Year End
E	Fund Balance (A+B-C)	\$138,375,131.50	\$147,759,704.47
<b>Additional Fiscal Projections Based on Assumptions</b>			
	Major Encumbered Funds <sup>1</sup> Approved but not spent as of 10/1/11	Total (\$31,274,117.50)	Total (\$31,274,117.50)
	<ul style="list-style-type: none"> <li>• Grant Projects</li> <li>• Dutchman</li> <li>• Milltown</li> </ul>	(\$26,948,009.45) (\$2,421,766.29) (\$1,904,341.76)	(\$26,948,009.45) (\$2,421,766.29) (\$1,904,341.76)
F			
G	Estimated Fund Balance minus major encumbered funds (E-F)	\$107,101,014.00	\$116,485,586.97

<sup>1</sup> This estimate of encumbered funds for site-specific projects includes the remaining budget for approved grant projects, the amount remaining of the \$3.2 million allocated for wetland enhancement in the 1998 Consent Decree that is being used for the Dutchman project, and remaining budget of the \$2 million allocated in 2011 to complete the State's Milltown restoration project. It does not include the remaining budget of non-grant, programmatic projects, such as the Clark Fork Watershed Education Program.

# Attachment C

## UCFRB Restoration Funds Granted & Proposed (11/8/11 TRC Proposal)

### A. Approved Restoration Grant Funded Projects funded by UCFRB Restoration Fund

Groundwater		Aquatic		Terrestrial	
Anaconda Water Studies	\$107,771	Antelope/Wood Creek Revegetation	\$10,000	Big Butte Acquisition	\$687,842
Anaconda Waterline	\$13,598,044	Bighorn Reach A Revegetation (50%)	\$55,400	Bighorn Reach A Revegetation (50%)	\$55,400
Basin Creek Dam Rehabilitation	\$503,006	Bird's Eye View Education Project (50%)	\$62,498	Bird's Eye View Education Project (50%)	\$62,498
Big Hole Diversion Dam	\$3,714,833	Bonner Pedestrian Bridge	\$975,652	Blue Eyed Nellie Moore Acquisition	\$142,500
Big Hole Pump Station	\$3,500,000	Browns Gulch Assessment	\$143,404	Butte Nursery	\$628,175
Big Hole Transmission Line Replacement	\$8,721,882	Browns Gulch Education PDG	\$17,602	Clark Fork Ed. Program (33.3%)	\$240,350
Ramsay School (33.3%)	\$5,384	Butte Fishing Pond/Open Space	\$1,225,000	Developing Tolerant Seed (Bridger)	\$672,644
Butte Master Plan	\$174,634	Clark Fork Ed. Program (33.3%)	\$240,350	Duham Acquisition	\$1,668,557
Butte Metering	\$273,600	Cottonwood Creek Flow	\$380,024	East Deer Lodge Valley	\$544,751
Butte Waterline	\$17,414,083	Douglas Creek PDG	\$35,000	German Gulch (50%)	\$462,856
Clark Fork Ed. Program (33.3%)	\$240,351	Dry Cottonwood Creek Ranch	\$23,150	Haefner PDG (20%)	\$4,950
High Service Tank Replacement	\$1,192,802	East Fork Rock Creek Fish Passage	\$370,000	Limestone Ridge PDG	\$22,589
Milltown Education PDG (33.3%)	\$7,971	Flint Creek PDG	\$7,000	Manley Ranch Cons. Easement	\$608,048
Opportunity Groundwater PDG	\$309,268	Garrison Trails Project	\$24,974	Maud S Canyon Trails	\$62,040
U of M Database Planning (33.3%)	\$3,183	Georgetown Lake Study	\$114,985	Milltown Education PDG (33.3%)	\$7,971
		German Gulch (1/2)	\$462,856	Milltown/Two Rivers Rec. Facilities (50%)	\$1,331,875
		Haefner PDG (80%)	\$19,800	Osprey Project	\$25,000
		Johnson/Cottonwood Creek Trail	\$633,015	Otter Distribution	\$24,982
		Little Blackfoot River PDGs	\$50,000	Paracini Ponds Acquisition (20%)	\$236,841
		Lost Creek Watershed	\$518,382	Peterson Ranch Conservation Easement	\$334,125
		Lower Browns Gulch Instream Flow PDG	\$25,000	Ramsay School (33.3%)	\$5,384
		Lower Little Blackfoot Flow Study PDG	\$25,000	Silver Bow Creek Greenway (40%)*	\$6,225,970
		Madsen Easement PDG	\$25,000	Stuart Mill Bay Acquisition (50%)	\$1,000,000
		Middle Little Blackfoot Flow Study PDG	\$25,000	Stucky Ridge/Jamison Conservancy	\$265,335
		Milltown Acquisition	\$595,628	Thompson Park Improvement Project	\$988,402
		Milltown Bridge Pier & Log Removal	\$262,177	U of M Database Planning (33.3%)	\$3,183
		Milltown Education PDG (33.3%)	\$7,971	Vanisko Conservation Easement PDG	\$20,140
		Milltown Sediment Removal Project	\$2,819,072	Washoe Park PDG (20%)	\$5,000
		Milltown/Two Rivers Rec. Facilities (50%)	\$1,331,875	Watershed Land Acquisition	\$5,831,904
		Myers Dam Diversion PDG	\$11,710	Z-4 Conservation Easement	\$10,000
		Paracini Ponds PDG	\$17,700	Spotted Dog (60%)*	\$9,944,405
		Paracini Ponds Acquisition (80%)	\$947,364		
		Racetrack Lake	\$500,000		
		Ramsay School (33.3%)	\$5,384		
		Silver Bow Creek Greenway (60%)*	\$9,338,954		
		Stuart Mill Bay Acquisition (50%)	\$1,000,000		
		TU Instream Flow Protection	\$25,000		
		Twin Lakes Diversion PDG	\$11,056		
		U of M Database Planning (33.3%)	\$3,183		
		Upper Little Blackfoot River Project	\$216,044		
		Upper Willow Creek Restoration	\$307,758		
		Warm Springs Ponds Rec. Improv.	\$97,577		
		Washoe Park PDG (80%)	\$20,000		
		West Side Ditch Flow Study PDG	\$25,000		
		West Side Ditch Metering PDG	\$25,000		
		Wetland/Riparian Mapping	\$71,400		
		Spotted Dog Acquisition (40%)*	\$6,629,604		
Granted Subtotal	\$49,766,812		\$29,738,548		\$32,123,717
Percent Granted to Date by Resource	44.6%		26.6%		28.8%

\$111,629,077

### B. Approved Other Projects Outside Grants Program funded by UCFRB Restoration Fund via Consent Decrees

Groundwater		Aquatic		Terrestrial	
		Milltown (75% of \$9.6 Million)	\$7,200,000	Milltown (25% of \$9.6 Million )	\$2,400,000
		Dutchman (SBC CD) (60% of \$3.2 Million)	\$1,920,000	Dutchman (SBC CD) (40% of \$3.2 Million)	\$1,280,000
Subtotal	\$0		\$9,120,000		\$3,680,000
Other Projects Subtotal	\$49,766,812		\$38,858,548		\$35,803,717
Running Percent	40.0%		31.2%		28.8%

\$12,800,000

\$124,429,077

### C. Proposed Dutchman Consent Decree for UCFRB Restoration Funds

Groundwater		Aquatic		Terrestrial	
		Dutchman CD (60%)	\$3,780,000	Dutchman CD (40%)	\$2,520,000
Subtotal	\$0		\$3,780,000		\$2,520,000
Running Subtotal	\$49,766,812		\$42,638,548		\$38,323,717
Running Percent	38.1%		32.6%		29.3%

\$6,300,000

\$130,729,077

### D. Summary of Educational/Database Projects

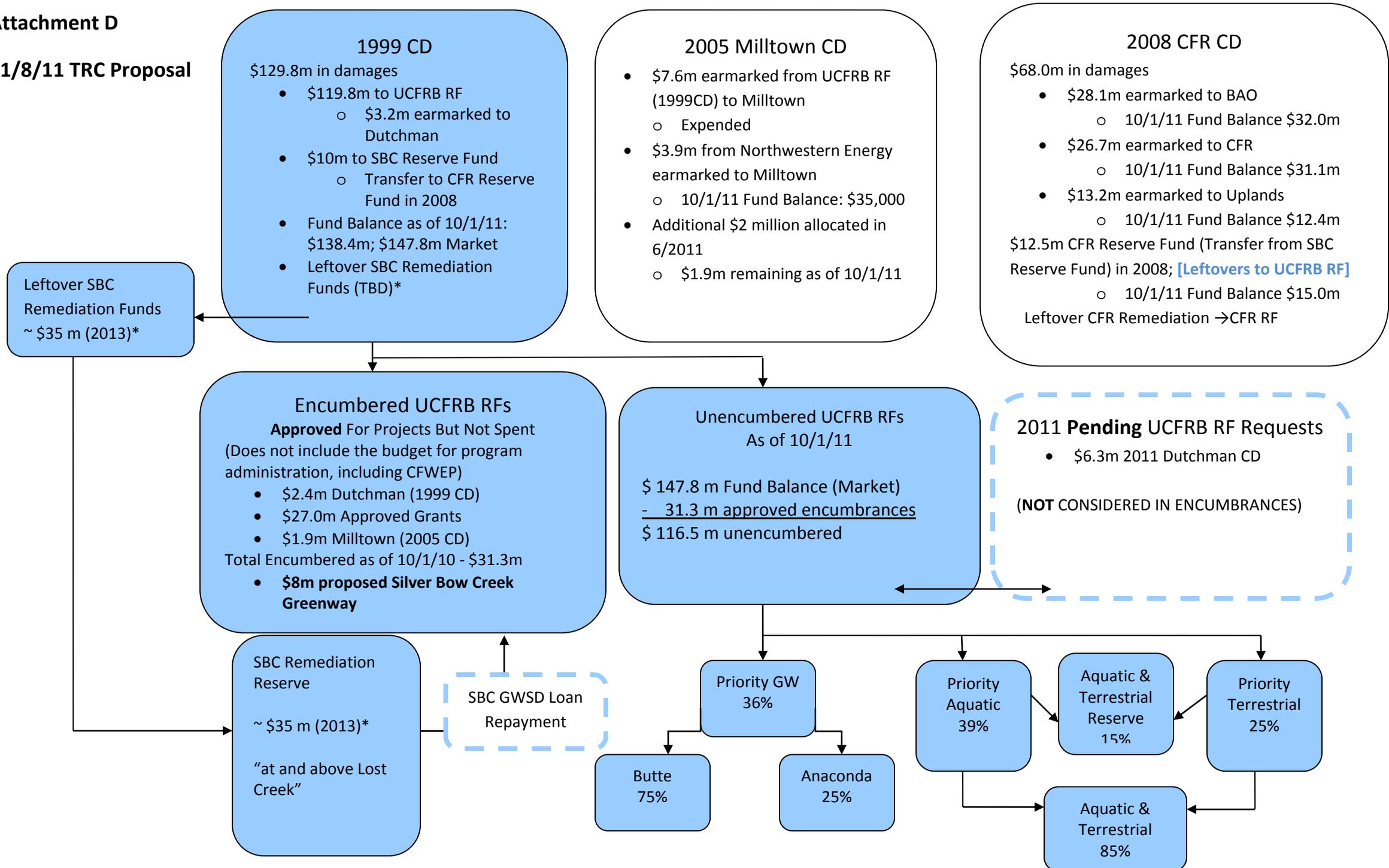
(these are included in tables above)	
Bird's Eye View Education Project	\$124,995
Browns Gulch Education PDG	\$17,602
Clark Fork Ed. Program	\$721,052
Milltown Education PDG	\$23,914
Ramsay School	\$16,151
U of M Database Planning	\$9,550
<b>Total</b>	<b>\$913,264</b>
Percent of Total	0.7%

### E. Summary of Recreational Projects

(these are included in tables above)	
Bonner Pedestrian Bridge	\$673,200
Butte Fishing Pond/Open Space PDG	\$25,000
Butte Fishing Pond/Open Space	\$1,200,000
Deer Lodge Trail PDG	\$25,000
Maud S Canyon Trail	\$62,040
Garrison Trails Project	\$24,974
Haefner PDG	\$24,750
Johnson/Cottonwood Creek Trail	\$633,015
Milltown/Two Rivers Rec. Facilities (50%)	\$1,598,249
Silver Bow Creek Greenway (30%)	\$4,669,477
Thompson Park Improvement Project (80%)	\$790,722
Warm Springs Ponds Rec. Improv.	\$97,577
Washoe Park PDG	\$25,000
<b>Total</b>	<b>\$9,849,004</b>
Percent of Total	7.5%

**Attachment D**

**11/8/11 TRC Proposal**



\*The amount of leftover Silver Bow Creek remediation funds that would be available for future allocation and when those funds would be available remains to be determined. In February 2010, Joel Chavez of DEQ estimated about \$35 million may be leftover following completion of major remedy construction expected in 2013.