
**THE STATE OF MONTANA'S RESPONSES TO
PUBLIC COMMENTS ON THE DRAFT 2002
UPPER CLARK FORK RIVER BASIN
RESTORATION WORK PLAN
VOLUME III**

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Acronyms

Advisory Council	Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council
ADLC	Anaconda-Deer Lodge County
ARCO	Atlantic Richfield Company
BSB	Butte Silver Bow County
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
CFR	Clark Fork River
EPA	Environmental Protection Agency
GSD	Greenway Service District
MDEQ	Montana Department of Environmental Quality
MERDI	Montana Economic Revitalization and Development Institute
MWF	Montana Wildlife Federation
MFWP	Montana Fish, Wildlife and Parks
NRD	Natural Resource Damage
NRCS	Natural Resource Conservation Service
NRDP	Natural Resource Damage Program
RPPC	UCFRB Restoration Plan Procedures and Criteria
SMB	Stuart Mill Bay
Tribes	Confederated Salish and Kootenai Tribes
UCFRB	Upper Clark Fork River Basin
USFS	United States Forest Service
WRC	Watershed Restoration Coalition

THE STATE OF MONTANA'S RESPONSES TO PUBLIC COMMENTS ON THE DRAFT 2002 UPPER CLARK FORK RIVER BASIN RESTORATION WORK PLAN (November 2002)

Introduction

On September 9, 2002 the State of Montana released for public comment its *Draft 2002 Upper Clark Fork River Basin Restoration Work Plan (Draft Work Plan)*. The State advertised the release of this *Draft Work Plan* for public comment in several newspapers in the Upper Clark Fork River Basin (UCFRB) and sent the *Draft Work Plan* to various libraries in the UCFRB. In addition, the State sent either copies of the *Draft Work Plan* or notices that the *Draft Work Plan* was available to more than one hundred individuals or entities that, in the past, have demonstrated a special interest in this matter. Those individuals included grant applicants, members of the UCFRB Remediation and Restoration Education Advisory Council (Advisory Council), environmental groups, and local governmental entities in the Basin.

A total of 66 individuals, including representatives of 6 entities, submitted official comments during the public comment period. The State held one public hearing on the *Draft Work Plan*. Thirty-two individuals commented at the Anaconda hearing held on September 24, 2002. The State received 28 comment letters before the public comment period closed on October 11, 2002.¹

This document provides the State's responses to these comments. The State's Natural Resource Damage Program (NRDP) prepared these responses on behalf of the Governor and the Governor's Trustee Restoration Council. The Appendix provides copies of the public comment letters and hearing transcripts. Each of the comment letters and hearing comments have been numbered and each comment has been assigned an alphabetic designation so that readers of this document can readily refer to the precise text of the various comments to which the NRDP is responding. Similar comments are listed and addressed together; other comments are listed and addressed individually. Under the "Category" and "Comment" headings, the NRDP summarizes these comments. The NRDP's response to comments, under the "Response" heading, indicates what changes, if any, were made to the *Draft Work Plan* and incorporated into the *Final 2002 Upper Clark Fork River Basin Restoration Work Plan (Final Work Plan)*.

¹The State received 32 additional comment letters after the public comment period ended. The Appendix provides a copy of those letters. Although the State does not respond to these letters directly, the subject matter of these letters was similar to other comments received that are addressed in this document.

CATEGORY 1: Support for the Greenway Project. The NRDP received 14 comments from 13 individuals and 1 entity supporting the Greenway project. (See letters 6B, 11, 23B, 25B; and hearing comments PH-2A, PH-8B, PH-12B, PH-13B, PH-15B, PH-16B, PH-17B, PH-18B, PH-19A, PH21D.) Reasons provided for support include:

- Since Silver Bow Creek is a major contributor of heavy metals to the Clark Fork River (CFR), it is important that restoration of the creek be a high priority.
- Restoring the integrity of the aquatic and terrestrial ecosystem of Silver Bow Creek will be a major step in bringing the creek to a superior trout fishery.
- Removal of all tailings at Ramsey Flats will allow the creek to revert to a more natural regime of meanders and aquatic vegetation.
- Treating the tailings in place under remedy would have been a temporary measure that would not have worked, so full removal is the right thing to do.
- Spending Restoration funds for removal of all tailings at Ramsay Flats is really compensating the public for injured natural resources and will remove a major threat to the health of the river.
- The Greenway proposal is a good balance between the investments proposed for restoring the stream and the access features necessary to protect those investments.
- Removal of all tailings at Ramsay Flats is a good idea because of the toxic dust that blows off the tailings during storm events onto the Ramsey school and town.
- The Greenway is an appropriate way to mitigate damage done by mining in the area.

Prior to the public comment period, the NRDP received 16 letters of support for the Greenway project from 10 individuals and 16 entities.

RESPONSE: These commentators' support of the Greenway will be noted in the *Final Work Plan* under the NRDP's analysis of the "Public Support" criterion of this project in Appendix C. The *Draft Work Plan* already recognizes the strong public support for this proposal, thus the characterization of the support as "Broad" will remain. The benefits indicated in these comments are generally covered under the "Relationship of Expected Costs to Expected Benefits" criterion and other criteria aimed at isolating benefits, thus no additional changes to the *Draft Work Plan* are necessary. In addition, the NRDP would like to point out that removal of tailings along Silver Bow Creek that would otherwise be treated in-situ conforms to the State's 1995 *Restoration Determination Plan* for this site that was developed for the purposes of the State's natural resource damage (NRD) litigation.

CATEGORY 2: Support for the Butte and Anaconda Waterline Projects. The NRDP received 6 comments from 4 individuals and 2 entities supporting the Butte and Anaconda Waterline projects. (See letter 23C and hearing comments PH-12C, PH-15C, PH-16C, PH-17B, PH-18C.) Reasons provided for support include:

- The waterline projects are very important to the citizens of both counties.
- The projects meet the goals of replacing lost resources that the citizens of Butte and Anaconda have not been able to use.
- The projects will help conserve water and therefore help both people and fish. With less water leaking through pipes, less water will need to be taken from surface water and groundwater supplies.
- Less water loss through leaking pipes means more water left in the river for fishing.

Prior to the public comment period, the NRDP received 1 letter of support from 1 entity for the Butte Waterline project and 7 letters of support from 6 entities and 1 individual for the Anaconda Waterline project.

RESPONSE: These commentators' support of the Butte and Anaconda Waterline projects will be noted in the *Final Work Plan* under the NRDP's analysis of the "Public Support" criterion of these projects in Appendix C. With the documentation of public support from these commentators, and also those commenting in support of all four projects (Category #7), the public support for the Butte Waterline project will be characterized as "Moderate" instead of "Limited," and the support for the Anaconda Waterline project will remain characterized as "Moderate."

CATEGORY 3: Opposition to the Butte and Anaconda Waterline Projects. The NRDP received a comment from Bill Janecke of the George Grant Chapter of Trout Unlimited questioning the value of the Butte and Anaconda waterline projects. Butte and Anaconda gained the economic benefits that mining and smelting brought and now they are gaining the benefits of remediation funds to recover from the impacts of mining and smelting. The communities are unwilling to accept the economic consequences of what they've lived on for so long. Although the waterline projects can legally be funded, they don't help conserve or do anything to help the recovery of the natural resources. (See hearing comment PH-2B.)

RESPONSE: This commentator's opposition to the Butte and Anaconda Waterline projects will be noted in the *Final Work Plan* under the State's analysis of the "Public Support" criterion. The State disagrees with the reasons provided for not funding the projects and recommends that the projects be funded in the *Final Work Plan*.

The Butte and Anaconda communities can rightfully seek to benefit from the expenditures of NRD funds primarily because the damages recovered for injuries to natural resources covered in the Montana v. ARCO 1998 partial settlement included substantial damages

for injury to groundwater and surface water in the Butte and Anaconda areas. These projects address injured resources for which restoration has been determined to be technically impracticable in the State's 1995 *Restoration Determination Plan* and by the Record of Decisions for the Butte Hill bedrock aquifer and Anaconda area shallow groundwater resources. Contamination to these groundwater resources is severe and widespread: The Butte bedrock groundwater injured area covers 7 square miles (4500 acres) and, at this time, has a volume of some 220,000 acre-feet. Groundwater contamination in the upper portion of Anaconda area aquifer groundwater extends over 40 square miles (25,000 acres) and totals more than 400,000 acre feet.

The repair of leaking waterlines in Butte and Anaconda constitutes replacement of drinking water services and use values that were lost to the public in the past and will be lost to the public in the future as a result of the groundwater contamination in the Butte Hill bedrock aquifer and the Anaconda area shallow aquifer. By fixing the waterlines, the supply of drinking water is increased and that, in effect, replaces the supply of drinking water that has been lost as a result of the contamination. Also, a groundwater aquifer acts as an underground drinking water transport facility. The drinking water transport services of the contaminated Anaconda aquifer have been effectively lost. Replacing leaking pipelines for drinking water transport purposes, in effect, replaces these lost drinking water transport services. Repairing the leaking pipelines constitutes a form of compensatory restoration because such repairs compensate the Butte and Anaconda public for the lost drinking water use and existence values. Given that these contaminated aquifers cannot be restored, it's appropriate to be funding replacement of services lost due to these injuries. This direct connection between lost services and the services this project will replace is addressed in the Project Criteria Narrative for both projects in the *Draft Work Plan*.

The projects also contribute to conservation and protection of natural resources. As recognized in the *Draft Work Plan*, the benefits of the waterline projects include the opportunity to conserve more water during drought conditions as a result of reduced leakage. Also, optimization and conservation of existing water resources from the current leaking water supply system in these communities is an effective means of protecting these impacted communities' alternate water resources.

CATEGORY 4: Support for the Stuart Mill Bay Project. The NRDP received 53 comments from 59 individuals and 5 entities supporting the Stuart Mill Bay (SMB) project.² (See letters 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22A, 23A, 24, 25C, 26, 27, and hearing comments PH-1, PH-2C, PH-3, PH-5, PH-6, PH-7, PH-9, PH-10B, PH-11, PH-12D, PH-13C, PH-14C, PH-15A, PH-15D, PH-16D, PH-19B, PH-20, PH-21B, PH-23B, PH-24, PH-25, PH-26, PH-27, PH-28A, PH-29, PH-30, PH-31, PH-32A.) Many of these commentators specifically indicated their support for the purchase in its entirety rather than a partial purchase of the lakeshore portions only or their opposition to any further subdivision and development at SMB. (See letters 1, 2, 9, 12, 14, 15, 16, 17, 18, 19 21, 22A, and hearing comments PH-2C, PH-5, PH-9, PH-15A.) The reasons most often offered in support of the project include:

² After the public comment period closed, the State received an additional 18 letters signed by 45 individuals in support of the SMB project. Copies of these late letters are included in the Appendix.

- The property is readily accessible to the public and has been historically open to and extensively used by the public. Public access at Georgetown Lake is becoming more and more limited. (Dwindling public access at Georgetown Lake was the most frequently offered reason for support of the SMB acquisition in the public comments received).
- SMB includes important habitat for fish and wildlife, including spawning trout, eagles, deer, and elk, ducks, osprey. It has important wetland habitat and is a staging and spawning area for trout.
- SMB offers excellent wildlife and waterfowl viewing, waterfowl hunting, camping, boating, year-round fishing opportunities, and open space and scenic values. (Many commentators offered personal testimonials about their use and enjoyment of the SMB area in the past and indicated their desire to have such opportunities available to future generations.)
- The acquisition will give back the public back land to use, enjoy, and appreciate and thereby compensate the public for some of the loss of such lands due to mining contamination. It is a fitting exchange for those nearby areas contaminated from mining/smelting activities that can no longer be reclaimed to their original state. We should consider that the NRD lawsuit was about mining damage from the Anaconda Co., that the SMB property used to be owned by the Anaconda Co., and the public lost out when Anaconda sold it to Washington Corporation.
- Part of the NRD lawsuit, the compensable damages, was for lost recreational services. We haven't spent a lot of money yet specific to the lost fishing opportunities of the UCFRB. Given the high recreational use of Georgetown Lake by folks from Butte, Anaconda, and the Deer Lodge Valley, this is a great opportunity to do so—for our and future generations.
- The Georgetown Lake area is overcrowded and has too much existing or planned development. This development has degraded or will diminish/degrade water quality (e.g. increased sewage and fertilizer that lead to excessive nutrients and nuisance aquatic weed growth); fish and wildlife habitat and populations; water quantity; scenic views; and public recreational access. This acquisition will prevent similar impacts from development at SMB.
- The acquisition is time critical as the landowner intends to develop the property if the acquisition fails. This is our last best chance to preserve a portion of the lake for the future.
- The benefit, including economic benefit, to the community from recreational opportunities outweighs the potential economic loss to the tax base. Folks who use and enjoy the SMB contribute to the economy of local business. The new sporting goods store and planned hotel will generate more tax revenue than subdivision development at Georgetown Lake. These businesses rely on customers who value a healthy fishery and

public access at Georgetown Lake. It's not the taxes from development that brings money to the community, it's recreation and tourism. A study in Yellowstone County indicated that for every dollar of taxes that were charged in urban development or rural development, it cost \$1.50 in services to the local community.

- Whether it's tourist dollars or taxes coming in, the county will benefit. The acquisition protects values that make Montana a drawing card for tourists. Tourism brings needed money to the local economy. Public access at SMB will increase the county's revenues from tourism and having open space left at SMB enhances the value of and, consequently, the tax revenue potential from, the areas at Georgetown Lake that are developed or slated for development. The county supports the project.
- There is an over-abundance of beautiful tracts of land and homes in the county available for recreational development, including five miles along Warm Springs Creek west of Anaconda to Georgetown Lake. This indicates that there is no need to put the hillside area of SMB in private hands for the promise of increased property tax revenue.
- Although the price seems expensive, it's a bargain at the proposed price compared to sales in the Swan Valley that are going for \$10,000 an acre. When you look into the future, the price is worth it.

In addition to the comments received during the public comment period, the NRDP received 255 letters from 271 individuals and 9 entities in support of the SMB project before the public comment period started and 18 letters signed by 45 individuals in support of the SMB project after the public comment period ended.

RESPONSE: These commentators' support of the SMB project will be noted in the *Final Work Plan* under the NRDP's analysis of the "Public Support" criterion of this project in Appendix C. The *Draft Work Plan* already recognizes the strong public support for this proposal, thus the characterization of the support as "Broad" will remain. The benefits of this project are covered more generally under the "Relationship of Expected Costs to Expected Benefits" criterion and other criteria aimed at isolating benefits, thus no additional changes to the *Draft Work Plan* are necessary.

CATEGORY 5: Opposition to the Stuart Mill Bay Project. The NRDP received 4 comments from 3 individuals opposing the SMB project.³ (See letters 6A and 28 and hearing comments PH-4 and PH-17A.)

COMMENT: Natalie Fitzpatrick, in both written and oral comments, opposes the SMB acquisition unless agreement is reached to separate the shoreland and upland parcels, keep the shoreland parcels for public ownership and use, and sell the upland parcels for subdivision and

³ After the public comment period closed, the State received an additional 14 letters signed by 14 individuals in opposition to the SMB project. Copies of these late letters are included in the Appendix.

development. Reasons Ms. Fitzpatrick offers in support of her position are summarized as follows:

- Only 10% of the developable land in the county is private and sufficient recreational opportunities exist on the existing state and federal public lands.
- The tax revenue loss from the upland area is unjustifiable. Development of 160 acres of the upland developed into 80 two-acre plots would raise \$96,000 in tax revenue in contrast to the \$363 anticipated tax revenue without development.⁴ This represents lost income for schools and county services, which are facing cuts that will call for more tax revenue. ADLC has taxes that are 50% higher than other counties.
- Due to contamination, the most viable option for community growth is the West Valley, particularly in the Georgetown Lake area. Denying development of this lakefront acreage punishes rather than repays the county for mining-caused damages.
- The upland area is not environmentally sensitive. Initially the NRDP considered development of the upland parcel an acceptable alternative. Wildlife on the lake seems to have adapted well to development. Responsible, planned development won't degrade the lake's water quality because the development would need to meet standards set for septic systems to prevent any contamination, such as with the recent Pintler Estates development.
- The county has to encourage development not only to grow but to survive; the new arrivals will add vitality as well as income to the community. We should not remove valuable lands from the ADLC tax base to preserve a way of life for the project supporters, most of whom are not ADLC taxpayers.

COMMENT: Charles Haeffner opposes the SMB acquisition because it would negatively impact potential tax revenues. Instead of buying land, the government should be adequately funding education and correction facilities. Development won't hurt wildlife; elk are running through town and are plentiful in other places like Gardiner. We have to pay to upkeep the property. Government is already over-spending; just consider the recent legislative special session. A good choice can be made about how much of that land should be saved and hopefully we'll reach a decision everyone can live with. (See hearing comment PH-4.)

COMMENT: Mike Sisich opposes the SMB project it would negatively impact potential tax revenues (See letter 28.)

RESPONSE: These commentators' opposition to the SMB project will be noted in the *Final Work Plan* under the NRDP's analysis of the "Public Support" criterion of this project in Appendix C. Given that the large majority of the public comments received on this project are

⁴ Ms. Fitzpatrick provides additional tax revenue estimates from various levels of development and 2001 statistics on the property tax capacity of Southwestern Montana counties that are not summarized here but are available for review in the Appendix.

in support of this project, the NRDP's summary characterization of the public support for this project as "Broad" in the *Draft Work Plan* will remain in the *Final Work Plan*.

Both commentators oppose the entire SMB project primarily because of the reduced potential tax revenue that will come under public ownership instead of having the SMB parcel or the upland parcel portion sold for subdivision and development. The *Draft Work Plan* recognizes this potential impact but does not attempt to quantify the potential tax loss. It identifies the likely tax rate under state ownership (which is the same rate under the existing private ownership) and offers example tax rates for small, developed lakeshore parcels. The *Draft Work Plan* also notes, as have many of those submitting comments in support of the project, that other factors to consider in assessing potential impacts to the tax base are: that the tax revenues are based on current uses and not potential uses; that there are additional taxpayer costs associated with providing public services to subdivided developments; and that revenues tied to recreational use can offset potential tax revenue losses. In assessing the significance of this impact of potential tax revenue, the NRDP relied greatly on the input from ADLC on this matter. In a letter of support for the project provided in the application, ADLC indicates the county believes the public benefits outweigh any potential economic loss to the county.

Both commentators believe that development could occur without negative impacts to water quality and wildlife. In the analysis of project benefits and the impacts to the environment contained in the *Draft Work Plan*, the NRDP identifies the potential impacts of development to water resources and wildlife. It also recognizes that impacts are dependent on the type of development and that whether or not detrimental development would occur is unknown. The NRDP concludes that it is possible that some level of development could occur on the property without significant environmental impact, but public access would most likely be lost unless specific access agreements are implemented.

Both commentators cite personal observations that wildlife still abounds in the developed areas at Georgetown Lake and other areas. Others commenting in support of the project offer personal observations that are just the opposite—that wildlife populations have decreased as development has occurred at the lake. This information is largely anecdotal and no site-specific wildlife population data is available to validate either set of observations. The retired Montana Fish, Wildlife and Parks (MFWP) wildlife biologist for the area has indicated that moose/human conflicts have regularly occurred in all of the developed areas around SMB.⁵ The current MFWP wildlife biologist for the area identified the following potential impacts to wildlife and wildlife habitat from development of the property:⁶

- Invasion of noxious weeds with the disturbance of soils (road and house construction).
- Wildlife habitat reduction due to timber removal to accommodate development.
- Elimination of wildlife corridors with development through travel routes.
- Increased game damage:
 - Black bear problems associated with additional development. Problems with bears in resident's garbage, bird feeders, pet food, etc.

⁵ Information provided in a 4/26/02 memorandum from Dan Hook of Blue-Eyed Nellie Consulting to Carol Fox of the NRDP.

⁶ Information provided in a 7/29/02 memorandum from Bill Semmens of MFWP to Carol Fox of the NRDP.

- Human development infringing on habitat and disturbance to wildlife.
- Additional fencing (barriers to wildlife movement).
- Harassment of wildlife by domestic dogs.
- Increased human use in the non-developed upland area and disturbance to wildlife.
- Increased traffic and road repair/enhancement.
- Additional overhead power lines adding to the existing problems to eagle and osprey.

Thus, based on input from area wildlife biologists, the existing development has been detrimental to wildlife habitat and populations and additional development is also likely to be detrimental.

In its July 2002 *Pre-Draft Work Plan*, the NRDP did initially propose an alternative for further research that involved purchasing the entire property but then subsequently selling the majority of the 190-acre upland portion subject to limited public access provisions and development restrictions. The NRDP changed its recommendation from this alternative to funding the entire acquisition in the August 2002 *Revised Pre-Draft Work Plan* based on: 1) additional information from MFWP on our resale proposed alternative;⁷ 2) additional information and a greater understanding of the uncertainties and associated risks associated with this alternative; and 3) the strong demonstrated public support for the entire acquisition. MFWP indicated even limited development could jeopardize the integrity of the SMB ecosystem and suggested that if the acquisition does allow for some development, it should be limited to only about 20 acres in the northwest corner of the property to have the least impact on wildlife. Via discussions with the applicant, the NRDP learned that the resale option could jeopardize the entire transaction if The Conservation Fund judged the intended level of development as counter to its conservation mission. From pursuing different scenarios regarding what areas would be kept in public ownership, what areas could be sold, and what restrictions would be placed on the areas to be sold, the NRDP concluded that it would be difficult to arrive at an acceptable proposal that would generate enough money to make the resale alternative cost-effective. The difficulties and transaction costs in pursuing the resale alternative outweighed its potential financial benefits. The *Draft Work Plan* recognizes this decision-making sequence, and the NRDP has not received any wildlife data or other information that would lead us to a different conclusion. The overwhelming public support is for the acquisition in its entirety (Category #4). The contractual documents that would effect this land acquisition will not preclude a future resale option, however, such a resale would need to be the subject of an environmental and public review process and any proceeds would need to be returned to the Restoration Fund.

In summary, the State considered and the *Draft Work Plan* recognizes the disadvantages to the SMB acquisition that are raised by these commentators and concluded that the substantial public natural resource and recreational benefits to be derived from this project outweigh those disadvantages. The State recommends it for funding in the *Final Work Plan*.

CATEGORY 6: Future Management of SMB: The NRDP received a comment from Richard Priorita about the future management of the property. He expresses the desire to limit the use

⁷ Ibid.

and access by vehicles after this land has been purchased, noting observations of motorized recreational vehicles disturbing wildlife and trails on the property. (See letter 22.)

RESPONSE: MFWP is the entity that will take over ownership and management of the property once the transaction is completed. MFWP will draft a management plan for the property that will be the subject to public comment and provide a copy of that draft plan to Mr. Fiorita. MFWP recently produced an outline of the proposed management plan that will be summarized in the *Final Work Plan*. For the lakeshore parcels, the agency intends to restrict wheeled motorized vehicles to the main established road. Once MFWP is able to procure funding for site improvements, the agency plans to gravel and grade the existing main road and install barriers or fencing in needed areas to prevent off-road travel. The main road will be the only entrance road to the site.

CATEGORY 7: Support for all the projects. The NRDP received 19 comments from 16 individuals and 3 entities in support of all four of the projects proposed for funding in the *Draft Work Plan*. (See letters 8, 14, 21, 23A; and hearing comments PH-5, PH-8B, PH-10A, PH-12B, PH-13A, PH-14B, PH-16A, PH-18A, PH-21A, PH-22, PH-25, PH-27, PH-28B, PH-29, PH32B). Most of the commentators did not provide reasons for supporting all four projects but did provide reasons for supporting the Stuart Mill Bay project that are addressed separately under Category 4. The few reasons provided for supporting all 4 projects included:

- All four projects serve Butte and Anaconda.
- They are all good projects.
- Combined, the projects take care of leftover wastes, conserve resources, save water, and address community concerns about over-development at Georgetown Lake.

RESPONSE: These commentators' support of all four projects will be noted in the *Final Work Plan* under the NRDP's analysis of the "Public Support" criterion of each of the projects in Appendix C.

CATEGORY 8: General Comments: The NRDP received 6 comments from 4 individuals and 2 entities on aspects of the restoration decision-making process.

COMMENT: John Gibson, representing in the Montana Wildlife Federation (MWF), comments about the project ranking. MWF believes the highest priority should be placed on efforts to restore the UCFRB to a functional ecological condition and agrees with the ranking of the Greenway project as highest. The SMB project should be ranked higher than the Butte or Anaconda Waterline projects because it more suitably meets that funding requirement of "restoring, replacing, or acquire the equivalent of the injured natural resources that were the subject of Montana v. ARCO." (See letters 25A and 25D.)

RESPONSE: The *UCFRB Restoration Plan Procedures and Criteria (RPPC)* sets forth 22 criteria that the State considers in evaluating and comparing grant proposals. Among preferences provided in these criteria is a preference for actual restoration of injured resources. Of the four projects evaluated, the Greenway is the only project that meets this preference and the NRDP ranked it highest partly because of this preference. The other projects are all replacement projects. In examining all the other criteria, the NRDP ranked the SMB project below the waterline projects primarily because of its high cost per acre.

MWF accurately quotes the minimum qualification requirement contained in the *RPPC*. Implicit in the definition of injuries to natural resources, however, are the services lost to the public due to those injuries. Montana v. ARCO covered both natural resource injuries and lost services via a restoration damage claim and a compensable damage claim. “Restoration Cost Damages” are the costs necessary following remediation to restore the injured natural resource and/or the services it provides to their baseline condition. “Services” are the biological and physical functions a resource provides for the public or another resource. “Compensable Value Damages” are the costs to compensate the public for the lost use of the natural resources and their intrinsic value. These are measured by estimating the value of the benefits the resources would have supplied if the resources had not been injured. An example is the value of lost drinking water use due to groundwater contamination. The minimum qualification does not distinguish between eligible projects that restore or replace injured natural resources and eligible projects that restore or replace lost services. All projects that will restore, rehabilitate, replace, or acquire the equivalent of injured natural resources **and/or** the services lost as a result of releases of hazardous substances by ARCO or its predecessors that were the subject of the Montana v. ARCO lawsuit are eligible for funding consideration. Thus, the reason MWP offers for why the SMB project should be ranked higher than the waterline projects is not a valid one under the *RPPC*. Since that is the only reason offered for changing the ranking, the State will not change the project ranking in the *Final Work Plan*. When the *RPPC* is next revised, the State will include “the services lost” in the provision in the minimum qualification criterion language regarding legal threshold for clarification.

COMMENT: John Ray advocates that the NRDP establish a clear vision statement of what we want the basin to look like after remediation and restoration are completed and that this vision should include mission, goals, strategies, and projects. A clear vision statement would describe what we want the basin to look like in ideal terms in the future. It would allow working backward from the future conditions we would like to see in the basin to the present damaged resources in order to design a course that will get us from here to there. The current process is more of a piecemeal approach to projects without any clear overview of how those projects fit into the vision we have of the watershed. (See hearing comment 8A.)

RESPONSE: This comment is more relevant to the *RPPC* than the *Draft Work Plan* and therefore does not require a change in the *Draft Work Plan*. This comment is similar to those received on the *RPPC* and the two previous annual work plans recommending the State develop a comprehensive plan setting forth broad basin-wide watershed scale restoration needs and goals. One of the principal reasons the NRDP has not developed a comprehensive plan to date is that several significant Records of Decision, including those for the CFR and the Butte Priority Soils Operable Units, have not been issued, and the State’s NRD claims involving the CFR and Butte

Area One and the Smelter Hill Area Uplands site have not been resolved. Without knowing the full extent of remediation to be required by the U.S. Environmental Protection Agency (EPA) in the UCFRB, how much the State will receive in restoration damages, and whether the State's restoration plans for these sites will be accepted by the court, the NRDP believes that it would be premature, and an inefficient use of restoration funds, to finalize a comprehensive basin-wide restoration plan. Moreover, the completion of such a plan could actually conflict with remediation planning and the State's ability to recover further damages in the State's lawsuit.

Based on public input suggesting a "comprehensive watershed approach" for restoration projects, the NRDP, with approval from the Advisory Council and the Trustee Restoration Council, initiated a pilot planning effort focusing on the Silver Bow Creek watershed drainage in early 2002. The purpose of the planning effort is to complete a general watershed characterization that identifies the existing conditions within the watershed and the desired future conditions of the aquatic and terrestrial resources and associated recreational services. The outcome will identify the scope and associated costs of activities necessary to achieve the desired future conditions based on the difference between desired and existing conditions. The final document is intended to assist in prioritizing how Restoration funds are spent in the Silver Bow Creek watershed. It will also serve as a pilot for a comprehensive planning effort for the entire UCFRB, once the remaining Superfund Records of Decision have been issued and NRD litigation is resolved. The process involves extensive public participation, particularly during the initial and final stages. This planning effort will, as suggested by Mr. Ray, allow us to design a course that will get us from the existing conditions to the desired future conditions.

COMMENT: Jon Sesso, Planning Director for Butte-Silver Bow County comments on three aspects of the restoration planning process. (See hearing comment PH-12A.) He reasserts previous comments that:

- 1) the policy of only spending the interest money on projects is a sound one that should be continued;
- 2) lawsuit monies should be spent where the damage occurred in the headwaters in the Butte and Anaconda area; and
- 3) the objectives of the Restoration Grants Program should focus on both people and natural resources. The program and investment of damage awards will be more effective if we emphasize the ability to meet both objectives and not fight between the two objectives. This year's projects provide the desired balance of serving both the restoration needs of the resource and the needs of the people through replacement projects.

RESPONSE: These comments relate to the *RPPC* more than the *Draft Work Plan*; therefore, no changes in the *Draft Work Plan* are necessary. Nevertheless, the NRDP offers the following observations on each of Mr. Sesso's comments.

- 1) The policy of spending only the interest was adopted as a temporary policy that is likely to be revisited when remediation decisions are completed and NRD litigation is resolved.
- 2) The natural resource injuries that were the subject of Montana v. ARCO covered the entire UCFRB extending from the headwaters of the Clark Fork River surrounding the City of Butte, downstream to Milltown Reservoir just upstream of the city of Missoula. Thus, as provided for in the *RPPC*, eligible projects can occur basin-wide, not just in the headwaters in the Butte and Anaconda area. To date, the majority of grant funds have concentrated in the headwaters areas, partly because projects that will primarily benefit the CFR aquatic resources cannot be considered until the restoration damage claim for aquatic resources of the CFR is resolved.
- 3) The *RPPC* criteria consider both the benefits to resources and the people who use and enjoy those resources. The NRDP has been and will continue to work together with the people of the Basin, along with other interested members of the public, to identify projects that restore or replace natural resources and also fulfill the needs of people who rely on and can use those resources.

COMMENT: Chris Marchion provided comments on the CFR Proposed Plan, pitching that members of the community should support a strong, effective cleanup of the CFR. We should learn from the lesson about the inadequacy of in-situ treatment for the Silver Bow Creek tailings and push for the same kind of tailings removal in the Clark Fork cleanup as we are doing there. The cleanup will provide good, high paying jobs--more so than the operations at the Beal Mountain Mine that provided some economic prosperity for a short time but then left the taxpayers with the cleanup bill. (See hearing comments PH-13B and PH-13D.)

Kathy Hadley seconds Mr. Marchion's comments that area residents should seek the best cleanup of the CFR. An aggressive cleanup means jobs for at least 20 years, economic wealth, tax generation, and a clean land base and river system for future generations. (See hearing comment PH-14D.)

RESPONSE: Since these comments are about the CFR Proposed Plan, no changes will be made in the *Draft Work Plan*. The NRDP agrees with need for an effective cleanup of the CFR. The NRDP has provided Mr. Marchion's and Ms. Hadley's comments to the U.S. EPA, the entity in charge of the CFR remediation, for consideration in its decision on a final proposed plan.

COMMENT: Tom Bugni comments that, after having participated in the planning process for a few years as an Advisory Council member, he appreciates that projects are now developing and being implemented, the expertise of those planning the restoration efforts, and the support of so many people behind the projects. We have one chance to do this, so do it right. (See hearing comment 21-C.)

Chris Marchion thanks those testifying and the NRDP staff for their efforts. (See hearing comment PH-13A.)

Kathy Hadley thanks the NRDP and Advisory Council for producing the restoration grant materials and providing opportunities for public input. (See hearing comment PH-14A.)

Mel Stokke thanks the folks testifying and the NRDP staff for their efforts. (See hearing comment PH-23A.)

RESPONSE: The NRDP acknowledges and appreciates these comments in support of the restoration process.

APPENDIX: COMMENTS

LIST OF COMMENT LETTERS

LETTER NO.	ORGANIZATION	AUTHOR	DATE
1		F.M. & Judith Gallagher	09/05/02
2		Richard Miller	09/05/02
3		John & Gail Grasso	09/05/02
4		Mike & Pat Leyan	09/09/02
5		E.T. Nobles	09/10/02
6		Natalie Fitzpatrick	09/11/02
7		Bruce Manly	08/21/02
8		Barbara Reed	09/22/02
9		Robert & Lorene Frigaard	09/21/02
10		Dave Lindgren	09/24/02
11		Roberta & John Ray	09/25/02
12		Dorothy Williams	09/27/02
13		Jennifer Anders	09/30/02
14		Dean Reed	09/30/02
15		Greg Manson	10/01/02
16		Mayme Uhl	10/01/02
17		Jeanine Manson	10/01/02
18		Suzanne O'Mahoney	10/01/02
19		Michael & Julie Fink	10/01/02
20		Margaret Duggan	09/27/02
21		Jim Bjornemo	10/03/02
22		Richard Fiorita	10/08/02
23		Paul Olson	09/26/02
24		Harold & Jan Hoem	10/11/02
25	Montana Wildlife Federation	John Gibson	10/11/02
26		Winifred Stokke	10/15/02
27		Chuck Stokke	10/15/02
28		Mike Sisich	10/15/02

LIST OF ORAL COMMENTS AT PUBLIC HEARINGS

COMMENT NO.	ORGANIZATION	COMMENTOR	DATE
PH-1		Don Stouker	09/24/02
PH-2	Trout Unlimited	Bill Janecke	09/24/02
PH-3		Tom Puccinelli	09/24/02
PH-4		Charles Haeffner	09/24/02
PH-5		Jim Bjornemo	09/24/02
PH-6		Grant Ellison	09/24/02
PH-7		Mel Stokke	09/24/02
PH-8		John Ray	09/24/02
PH-9		Charles Dowd	09/24/02
PH-10		Fred Boyer	09/24/02
PH-11		Harold Hoem	09/24/02
PH-12	Butte-Silver Bow County	Jon Sesso	09/24/02
PH-13		Chris Marchion	09/24/02
PH-14		Kathy Hadley	09/24/02
PH-15	Deer Lodge County Commission	Wayne Ternes	09/24/02
PH-16	Public Lands Association	Tony Schoonen	09/24/02
PH-17		Natalie Fitzpatrick	09/24/02
PH-18	Anaconda Sportsmen	Larry Thomas	09/24/02
PH-19	Skyline Sportsmen	Bill Hohler	09/24/02
PH-20		Dave McKernan	09/24/02
PH-21	Skyline Sportsmen	Tom Bugni	09/24/02
PH-22		Robin McKernan	09/24/02
PH-23		Chuck Stokke	09/24/02
PH-24	Skyline Sportsmen	Vince Fischer	09/24/02
PH-25		Merle Green	09/24/02
PH-26		Wayne Hadley	09/24/02
PH-27		Gordon Tracy	09/24/02
PH-28		Gary Ouldhouse	09/24/02
PH-29		Jim Davison	09/24/02
PH-30		Steve Gerdes	09/24/02
PH-31		Joe Harper	09/24/02
PH-32		Gary Loshesky	09/24/02

**PUBLIC COMMENT SUMMARY TABLE
COMMENTS RECEIVED ON
DRAFT 2002 UCFRB RESTORATION WORK PLAN**

<u>Category 1: Support for the Greenway Project</u>	6B, 11, 23B, 25B; Public Hearing Comments PH-2A, PH-8B, PH-12B, PH-13B, PH-15B, PH-16B, PH-17B, PH-18B, PH-19A, PH-21D
Category 2: Support for the Butte and Anaconda Waterline Projects	23C; Public Hearing Comments PH-12C, PH-15C, PH-16C, PH-17B, PH-18C
Category 3: Opposition to the Butte and Anaconda Water Projects	Public Hearing Comment PH-2B
Category 4: Support for the Stuart Mill Bay Project	1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25C, 26, 27; Public Hearing Comments PH-1, PH-2C, PH-3, PH-5, PH-6, PH-7, PH-9, PH-10B, PH-11, PH-12D, PH-13C, PH-14C, PH-15A, PH-15D, PH-16D, PH-19B, PH-20, PH-21B, PH-23B, PH-24, PH-25, PH-26, PH-27, PH-28A, PH-29, PH-30, PH-31, PH-32A
Category 5: Opposition to the Stuart Mill Bay Project	6A, 28; Public Hearing Comments PH-4, PH-17A
Category 6: Future Management of the Stuart Mill Bay property	22B
Category7: Support for all the projects	8, 14, 21, 23A; Public Hearing Comments PH-5, PH-8B, PH-10A, PH-12B, PH-13A, PH-14B, PH-16A, PH-18A, PH-21A, PH-22, PH-25, PH-27, PH-28B, PH-29, PH32B
Category8: General Comments	25A, 25D; Public Hearing Comments PH-8A, PH-12A, PH-13A, PH-13D, PH-14A, PH-14D, PH-21C, PH-23A