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**FINAL**  
**THE STATE OF MONTANA'S RESPONSE TO**  
**PUBLIC COMMENTS ON THE DRAFT 2007**  
**UPPER CLARK FORK RIVER BASIN**  
**RESTORATION WORK PLAN**

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Acronyms or Abbreviations

Advisory Council	Upper Clark Fork River Basin Remediation and Restoration Advisory Council
B-SB	Butte-Silver Bow
<i>Draft Work Plan</i>	<i>Draft 2007 UCFRB Restoration Work Plan</i>
<i>Final Work Plan</i>	<i>Final 2007 UCFRB Restoration Work Plan</i>
NRDP	Natural Resource Damage Program
<i>RPPC</i>	<i>Restoration Plan Procedures and Criteria</i>
UCFRB	Upper Clark Fork River Basin

**STATE OF MONTANA’S RESPONSE TO PUBLIC COMMENTS ON  
THE DRAFT 2007 UPPER CLARK FORK RIVER BASIN RESTORATION WORK PLAN  
December 2007 Final**

**Introduction**

On September 5, 2007, the State of Montana released the *Draft 2007 Upper Clark Fork River Basin Restoration Work Plan (Draft Work Plan)* for public comment. The State advertised the release of this plan for public comment in three newspapers in the Upper Clark Fork River Basin (UCFRB) and posted it on the Montana Natural Resource Damage Program’s (NRDP) website. In addition, the State sent either copies of the plan or notices that it was available to 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 Advisory Council (Advisory Council), environmental groups, members of the public, and local governmental entities in the Basin.

A total of eleven individuals, including representatives of five entities, submitted formal comments during the public comment period. The State held a public hearing on the *Draft Work Plan*. Eight individuals commented at the Butte hearing held on September 26, 2007. The State received three comment letters before the public comment period closed on October 5, 2007. Appendix 1 provides summary tables on the comments and copies of the public comment letters and hearing transcripts.

This document provides the State’s responses to these comments. The NRDP prepared these responses on behalf of the Governor based on his final funding decisions.

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. Under the “Category” heading, the NRDP summarizes these comments. Under the “Response” heading, the NRDP indicates what changes to the *Draft Work Plan* will be incorporated in the *Final 2007 Upper Clark Fork River Basin Restoration Work Plan (Final Work Plan)*.

**Category 1:** Support for various proposed projects: The NRDP received comments from 10 individuals, including representatives of 6 entities, in support of specific projects as follows:

- 4 comments in support of funding the Greenway project ( PH-1, PH-2, PH-3, PH-4)
- 4 comments in support of funding the Thompson Park project (PH-3, PH-7, PH-8, and Letter 3)
- 1 comment in support of funding the Anaconda Waterlines and Water Studies projects (PH-2)
- 1 comment in support of the Big Hole and Butte waterline projects (PH-3)
- 1 comment in support of the Johnson/Cottonwood Creek project (PH-5)
- 1 comment in support of all the projects (PH-6)

Response: The Governor has approved all eight projects for full funding as proposed in the *Draft Work Plan*. These commenters' support of these projects will be noted in the *Final Work Plan* under the NRDP's analysis of the "Public Support" criterion for each of the projects in Appendix A of this work plan.

**Category 2:** Anaconda Waterline: The Massey family expressed concern about the delay in funding waterline work along 6<sup>th</sup> Street while other streets are being addressed, noting that it's been out for six years, thus requiring hauling of water (Letter 1).

Response: This comment is specific to a problem that is not connected the proposed 6<sup>th</sup> Street Waterline project in Anaconda. It involves a reoccurring service line leak that is the responsibility of the homeowner to repair. The E. 6<sup>th</sup> water main proposed for replacement will not be extended further westward to cover this particular residence.

**Category 3:** Opposition to funding Butte infrastructure projects and other NRD funding actions to date. Tom Bowler of Butte wrote in response to an editorial in the Montana Standard regarding the hearing on the *2007 Draft Work Plan* (Letter 2). Following are summaries of the major points he offered in his comments, some of which are not directly related to the *Draft Work Plan*/funding proposals.

- that low attendance/few public comments at a public hearing does not signify satisfaction;
- that B-SB water projects are not an appropriate use of NRD funds because it is not within the intent of compensation awarded for the destruction of Silver Bow Creek and because problems associated with the Butte water system were caused by the public's neglect of the system and not by contamination caused by mining;
- that funding decisions are politically motivated and B-SB gets an inordinate share of funding because of that;
- that the Anaconda water project is just as, or even more so, meritorious of funding, than the Butte waterline projects;

- that NRD funding would be better spent repairing environmental damage than on infrastructure improvement projects that should be funded by taxpayers;
- that the B-SB water utility is not accountable to anyone and not focused on water conservation/efficiency and that he has not seen the promised independent audit/evaluation of waterline work being conducted in-house;
- that B-SB has not replaced the High Service Tank previously approved for funding years ago and thus caused greater costs to be incurred by NRD or taxpayer monies;
- that the Butte community/government does not value its water, as judged by its lack of support for the removal of Parrot Tailings, lack of upgrades to its sewage treatment plant that discharges to Silver Bow Creek, and lack of water conservation efforts;
- that the Greenway project has been funded by a lot of grants but not yet provided for public recreational uses along Silver Bow Creek; and
- that more public outreach should occur to obtain more meritorious projects than the water infrastructure projects.

**RESPONSE:** The Governor has approved the Butte infrastructure projects for full funding as proposed in the *Draft Work Plan*. The following responses address those comments that are pertinent to the *2007 Draft Work Plan*. The commenter's opposition to Butte infrastructure projects will be noted in the *2007 Final Work Plan*. For reasons provided herein, the State believes these projects merit funding.

Re: Use of NRD funds for water improvement projects: The Butte community may 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 damages for injury to groundwater and surface water in the Butte area. Repair of leaking waterlines in Butte constitutes the public's replacement of both drinking water services and the past and future lost use values as a result of the groundwater contamination in the Butte Hill bedrock aquifer. By fixing the waterlines, the supply of drinking water is increased and that, in effect, partially replaces the supply of drinking water that has been lost as a result of the contamination. Also, since a groundwater aquifer acts as an underground drinking water transport facility, replacing leaking pipelines for drinking water transport purposes, in effect, also partially replaces these lost drinking water transport services. Repair of the leaking pipelines constitutes a form of compensatory restoration since such repairs compensate the public for the lost drinking water use and existence values. The *State's 1995 Restoration Determination Plan* considered upgrading Butte's antiquated water system as a viable restoration alternative for the bedrock groundwater injuries in Butte. Given that this contaminated bedrock aquifer cannot be restored, it is appropriate to fund replacement of services lost due to this injury. This direct connection between lost services and the services these projects will replace is addressed in the Funding Recommendations (Section 4) and Project Criteria Narratives (Appendix A) in the *2007 Draft Work Plan*.

Proportionately, 36.5% of the natural resource damages settled in the 1999 partial settlement were for injuries to groundwater resources and the services lost due to those injuries. In comparison, a similar proportion of 33% of the total approved for funding would be for water system improvement projects for the Butte and Anaconda communities if all eight projects proposed for funding in the *2007 Draft Work Plan* were approved for funding.

Re: Ratepayers should fund improvements: The State addresses this issue via its evaluation of the normal government function criterion. Attachment 1 contains this criteria narrative from the *2007 Draft Work Plan*, which provides the reasons why the State considers the Butte Waterline project as one considered to augment, not replace normal government function.

Re: Ranking of Butte waterline project above Anaconda waterline project: The State judged both waterline projects to merit funding, and the projects were judged to be very similar for most of the *RPPC* evaluation criteria. Comparing all eight proposals, the Butte Waterline project ranked 7<sup>th</sup> and the Anaconda Waterline project ranked 8<sup>th</sup>. Thus, it is not the case, as Mr. Bowler suggests, that the Butte project received the highest ranking while the Anaconda project received the lowest. Attachment 2 contains the ranking rationale for these projects provided in the *2007 Draft Work Plan*. In making its draft recommendations set forth in this plan, the Trustee Restoration Council voted to increase the funding cap from \$8.5 million to \$9.7 million in order to fund all eight projects.

Re: Need for water conservation: In its evaluation of the waterline projects, the State noted the uncertainties associated with whether the waterlines represented the most cost-effective alternative for the communities to conserve water, given general information indicating the significant water saving benefits associated with system-wide metering. The Butte Master Plan funded in 2004 and the proposed Anaconda Water Studies both will consider water conservation as part of the analyses of optimizing future water system improvements, including any proposed changes to metering requirements. The priorities determined via these planning processes should be the basis for future water system grant proposals. There will be an opportunity for public comment on these plans.

Re: Adequacy and oversight of work conducted by B-SB: As part of its review process, the NRDP evaluates the ability of an applicant to successfully complete the project in the Technical Feasibility section of the evaluation in the *2007 Draft Work Plan*. The NRDP determined this project to be reasonably feasible and likely cost-effective primarily based on similar past construction activities. As of December 2006, B-SB has replaced approximately 318,000 feet of transmission and system upgrades that exceeded \$50 million. B-SB successfully implemented 4 years of waterline replacement projects funded by the NRDP and is currently implementing the Year 5 and 6 projects.

The NRDP has contracted with a consulting engineer to assist in the oversight of the Butte Waterline Year 5 Project that is under construction by B-SB. As a part of this oversight, the NRDP and their consultant have conducted on-the-ground inspections of the construction in 2007; those inspections have indicated that B-SB is constructing waterline replacement adequately. In addition, the NRDP has required B-SB to document the construction progress with use of spreadsheets. These spreadsheets track weekly progress on a street by street basis

and are backed up with invoices, documentation and field verification. There are 12 separate sheets for each street that include: Material Quantity, Material Value, Equipment Quantity, Equipment Value, Labor Quantity, Labor Value, Miscellaneous Materials, Paving Costs, Miscellaneous Equipment, As Built Value, Engineer's Estimate and the Summary Sheet. These spreadsheets will define B-SB's actual cost to construct the Year 5 project. The project is nearing completion and, when completed, the results will be presented by the NRDP to the Advisory Council and Trustee Restoration Council and made available to the public.

Re: High Service Tank project: The High Service Tank replacement project was approved for funding in December 2004 and not subject of funding consideration in the *2007 Draft Work Plan*. B-SB has not executed this project due to a change in plans regarding the location of the new tank that required the County to purchase private property. B-SB completed the property purchase in the summer of 2007 and plans to bid out this project in early 2008. If the project bids exceed the 2004 project budget, B-SB will need to cover the additional costs via other funding sources besides NRD grant funds or reapply for NRD grant funds because the budget approved in 2004 cannot be increased. Since the NRD grants program operates on a reimbursement basis, no Restoration funds have been expended to date on this project. The State does not consider the delays associated with the High Service tank as an indication that the waterline projects cannot be completed efficiently or effectively, as judged by the on-going construction of the Year 5 and Year 6 Butte waterline projects as proposed.

Re: Greenway project: The Greenway project is more than just a trail system. It involves ecological improvements, land acquisitions/easements, and recreational access features. The Greenway project that is recommended for funding in the *2007 Draft Work Plan* is the fifth Greenway application to the NRDP. The following table provides a summary of budget and expenditure breakdown for these three features for the previous-funded project proposals.

**GREENWAY GRANTS SUMMARY FROM 2000-2007**

<u>YEAR</u>	<u>BUDGET</u>	<u>% SPENT</u>	<u>% ECOLOGICAL</u>	<u>% ACCESS</u>	<u>% LAND</u>
2000	\$1,772,758	45	30% (\$0.53M)	60% (\$1M)	10% (0.2M)
2001	\$1,206,755	50	30% (\$0.4M)	60% (\$0.7M)	10% (0.1M)
2002	\$4,995,263	60	86% (\$4.3M)	10% (\$0.5M)	3% (0.15M)
2005	\$1,845,500	15	87% (\$1.6M)	0%	13% (0.25M)
<b><u>TOTALS</u></b>	<b><u>\$9,820,276</u></b>		<b><u>68% (\$6.83M)</u></b>	<b><u>22% (\$2.2M)</u></b>	<b><u>7% (0.7M)</u></b>

Of the \$9.9 million approved for funding to date, approximately half has been expended to date; the balance remains in the Restoration Fund earning interest. The monies spent to date have been primarily been spent on ecological enhancements coordinated with remediation that involve organic matter addition, revegetation, stream restoration, tailings removal at Ramsay Flats, and monitoring. The Greenway project thus facilitated the efficient integration of restoration and remediation, thereby accomplishing significant cost savings. The trail access features have not been completed to date due to complexities associated with purchasing or obtaining easements for the lands along the floodplain corridor. The recent change in ownership of RARUS railroad, which owns a lot of the floodplain area in the first five miles of Silver Bow Creek, triggered the need for additional negotiations. The Greenway Service District completed

these negotiations in December 2007 and plans to construct trail and access features in the first three miles in 2008. Access features in the first miles were a major component of the initial two grant proposals but not the subsequent grant proposals.

For the 2007 proposed project, 65% of the project budget is for ecological enhancements that will be coordinated with remediation activities; 22% will be for access bridges; and 12% will be for land acquisition planning and completion along the entire 22 mile Silver Bow Creek coordinate. The access bridges are best installed during the remediation construction activities. The Greenway Service District has appropriately applied for funding for these ecological, access, and land acquisition activities associated with this grant based on optimal coordination with remediation activities.

For these reasons, the State does not believe the delay with the trail portions associated with the past Greenway projects should be a reason to not fund the 2007 project.



**Attachment 1: Evaluation of Normal Government Function for Butte Waterline Project**  
(from p. A-69 of 2007 Draft Work Plan).

18. Normal Government Functions – Within but Augments Normal Government Functions

Upgrading municipal drinking water lines is a normal responsibility of local governments that is typically accomplished via funding from grants and ratepayers. For projects like this one that augment normal government function, the *RPPC* contemplates cost sharing by the applicant.

The costs B-SB faces to upgrade their system are greater than typical community costs due, in part, to pervasive groundwater contamination underlying Butte. In the absence of that injury, Butte may have been able to construct a simpler and less expensive nearby groundwater system than the existing system that relies on more distant uncontaminated surface water sources, as further documented in the State's 1995 NRD assessment report.<sup>1</sup> While B-SB water rates<sup>2</sup> are somewhat higher than some other similar communities, B-SB does not currently meet the target rates for eligibility for grants funds, such as the Treasure State Endowment Fund and Renewable Resource Grant and Loan programs because B-SB's combined water and sewer rates are lower than the target rate for combined systems.<sup>3</sup> This target rate, which is based on user rate survey and community median household income, is an indicator of whether the applicant is contributing a reasonable amount towards state project financing. In addition, currently only 43% of B-SB water users are metered. B-SB indicates it will evaluate the necessity of a rate increase in order to maintain the current level of system improvements in the forthcoming Water Master Plan, which is to be completed this fall. This plan will also evaluate system-wide metering.

Another consideration of this criterion is that B-SB seeks to address the water main leak problems over a 15-year period to bring annual maintenance costs in line with other similar utility systems. Over the 15 years, NRDP funding would result in the replacement of about 30%, which is 255,000 feet, of the total 877,500 feet of pipeline that needs to be replaced. After that, B-SB will be closer to reaching a routine maintenance schedule.<sup>4</sup>

A final consideration of this criterion is the amount of cost-sharing provided by B-SB. B-SB proposes a 10% match for this proposal; the match for previous years ranged between 25 to 32%. While this is a lower match than in previous years, given the other factors considered in this criterion, particularly that Restoration Funds are being used for 30% of the needed replacement, the NRDP believes this project is one that acceptably augments normal government function, not replaces it.

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<sup>1</sup> *Revised Report and Rebuttal: Assessment of Damages to Groundwater and Literature Review of Water Use Values in the Upper Clark Fork River Drainage*, Duffield, October, 1995. Note: this report estimates lost use values for Butte's bedrock and alluvial aquifers.

<sup>2</sup> B-SB Application; average flat rate is \$46.58, average monthly metered rate \$32.23, page 63.

<sup>3</sup> B-SB's combined target rate is \$53.81 and B-SB's actual combined metered rate is \$45.73 as per [http://comdev.mt.gov/Census\\_Results.asp](http://comdev.mt.gov/Census_Results.asp) and John Van Daveer, B-SB phone conversation with Tom Mostad NRDP, May 24, 2007.

<sup>4</sup> Per B-SB's application, an accepted rule-of-thumb for utility is to replace one percent of system each year. Given it's age, the B-SB water distribution system should be about 80% replaced by 2017, based on the anticipated 15 years of replacements funded by NRDP and other replacements funded by B-SB.

**Attachment 2: Ranking Rationale:** (For Anaconda Water Studies, Butte Waterline and Anaconda Waterline projects) from p. 47 of *2007 Draft Work Plan*.

The NRDP ranked the Anaconda Studies above the Anaconda and Butte Waterline projects because the studies are critically needed to cost-effectively manage ADLC's future water conservation activities and thereby prioritize future water system improvement requests to the NRDP and other grant programs. In its cost-effectiveness analysis for the two waterline projects, NRDP noted the uncertainties associated with whether the waterlines represent the most cost-effective alternative for the communities to conserve water given general information indicating the significant water saving benefits associated with system-wide metering. There is no such uncertainty with the Anaconda Water Studies, which, combined with the already-funded Butte Master Plan, can lead to more cost-effective groundwater replacement proposals than the waterline replacement proposals currently being advanced by ADLC and B-SB. While the Anaconda Water Studies and two waterline projects were all deemed to offer commensurate benefits, the Studies project has the potential to derive at least net benefits should it lead to implementation of system-wide metering in Anaconda.

The NRDP ranked the Anaconda Waterline below the Butte Waterline project because of its reduced match (1.4% compared to Butte's 10%), because its cost per lineal foot (lf) of water main of \$253/lf is 60% higher compared to Butte's cost of \$158/lf, and because the Anaconda Waterline project augments normal government function to a greater extent than the Butte Waterline project. This greater augmentation is partly due to Anaconda's intended replacement of 100% of the leaking waterlines with Restoration Funds over 10 to 12 years vs. Butte's intended replacement of 30% of the leaking waterlines with Restoration Funds over a 15-year period.

# APPENDIX 1

Guide to Comments and Public  
Comments Received During the Public  
Comment Period

### List of Letters

Letter No.	Organization	Author	Date
1		Lucille and Mary Kay Massey	
2		Tom Bowler	9/28/07
3		Pete Madison	10/5/07

### List of Public Hearing Comments

Comment No.	Organization	Commenter	Date
PH-1	Greenway Service District	Dori Skrukrud	9/26/07
PH-2	Anaconda Deer Lodge Commission	Mark Sweeney	9/26/07
PH-3	Project Green	Northey Tretheway	9/26/07
PH-4		Lou Eveland	9/26/07
PH-5	Powell County	Ron Hanson	9/26/07
PH-6	Butte-Silver Bow Planning	Cindy McIlveen	9/26/07
PH-7		Senator Dan Harrington	9/26/07
PH-8		Harold Godtland	9/26/07

### Public Comment Summary Table

Category 1: Support for various projects	PH-1, PH-2, PH-3, PH-4, PH-5, PH-6, PH-7, PH-8, Letter 3
Category 2: Anaconda waterline	Letter 1
Category 3: Opposition to funding Butte infrastructure projects & other funding decisions	Letter 2

on envelope from Lucille + Mary Kay Massey

Please tell me what you think

both street water line out  
6 years why can't we get it  
done. We haul water from Spring  
H, H. other streets done twice !!

Hello – Montana Standard Editorial Staff and NRD Staff,

I write in response to the piece on the Montana Standard opinion page regarding the public informational meeting for the allocation of NRD funds for the upcoming cycle. While i always have great interest in this process having lost a little bit of my own skin in the initial acquisition of these funds, i regret that i was unexpectedly occupied and unable to attend the meeting in person. After many years of writing to complain about aspects of the process i had decided to give the NRD folks a rest knowing how dedicated they are and how hard they work but in opening the paper and reading the most silly surmise put forth by the Standard editorial staff that if the meeting is not well attended and everybody speaks well of the dead there are no complaints about the affair. To be sure, having been involved with numerous hostile public meetings myself there is absolute certainty that if the mob is angry and numerous, things are not going well – however, the opposite is not always true as in this case so the NRD has the Standard to thank for not LSDL in my particular case. Since the paper put forth the premiss that if people do not march into the forum like Sherman through Columbia South Carolina, wrecking the hall, performing the blood eagle on the staff, and various and sundry other acts of mayhem to express their displeasure then alles gute. No wonder the nation has become so polarized if the only way to have your point taken is to burn down the meeting place around the ears of staff to express your dissatisfaction. Thus, i am compelled to express my issues about the NRD process in writing having missed the meeting and not wishing my opportunity to express my dissatisfaction to be forfeit. I will bear in mind the Standard staff supposition for next year and plan to come to the meeting in a fevered pitch while they make their pitch.

Except for the first few years of this process i have written on nearly an annual basis to mention that i do not feel that the Butte- Silver Bow water projects are an appropriate use for these NRD funds.

This year i will also include the Greenway authority funding as well based on my perception of the progress. As i have mentioned previously, my opinion is that the Butte water distribution system repair is totally unrelated to natural resource damage compensation won for the destruction of Silver Bow Creek. Now as pointed out in the Standard editorial, the citizen's advisory panel thinks otherwise but i would ask, why would the Butte Silver Bow Chief executive sitting on the panel NOT think that the Butte waterlines were worthy of funding? Having a vested interest politically, economically, and very likely emotionally of course that person is going to say this is a dandy project. Of course ALL of the other folks on the panel are going to say so too for why would they want to burn any bridges and make enemies among their panel peers when one day they might anticipate that the three hundred pound gorilla of the Butte public works department will finally run out of funding requests and maybe their water line project will need a nod from the Butte folks. So sadly i have watched as these funds have become sucked into the corruption of political expediency rather than true need based on the letter and spirit of the intent of the Resource damage process as i saw it when i was asked to testify in the court case to win these funds for damage to Silver Bow Creek. So we load up the advisory boards with team players, run it through the system to the Governor -- who would be putting a noose about their own neck if any project got that far and they said no. The previous administration obviously employed the money to an extent to curry favor with industry and private sector interests to gain votes, the present administration seems to feel they must support their political base in Butte by distributing the funds to the inordinate requests of Butte Silver

Bow government and the local taxpayers to maintain votes. Nowhere does a disinterested third party from afar review these requests and say yes, all of these projects have merit under the provisions of natural resource damage law, or oh my, that is a stinker that can't possibly be funded, or is this really the best allocation of these limited funds. I would very likely have an apoplexy and expire if any project got as far as the Governor and it was not approved from watching this process unfold. All of the dirty work apparently goes on in the smoke filled back rooms further down the food chain to cull out the unpalatable and give the blessing of political correctness before the final official rubber stamp of the Governor. I have been dying all day wondering what secret deliberations had to take place and what bargains had to be struck for Anaconda to get the funding for their water lines – same kind of project as Butte, similar argument for need, and in my opinion meritorious as opposed to Butte on a moral basis; yet they were nearly deep sixed by the process. Most fascinating to me. How Anaconda waterlines could rank last when Butte's always get straight A's make me wondering at the manner of apple polishing the process requires.

As i see it, funding to the Butte water system restores no natural resources and replaces none. The Butte water distribution system was in operation almost from almost the start of the mining processes that destroyed Silver Bow Creek and so much more of the natural environment in Western Montana through reckless operation rather than necessity to harvest the Mineral wealth of Butte and process it in Anaconda and beyond. The Butte water system was not damaged by mining impacts, none of the sources of the water were damaged by mining or milling activities and in fact the system was very well laid out to insure that mining could progress efficiently and economically with every secure source of clean water that hands could be laid on very early on due to the low volume of water available in the immediate vicinity of the mines. So, clean water north of Butte, South of Butte, As far away as Silver Lake beyond Anaconda, The Big Hole River, and maybe even with an eye on the Jefferson River At Parrot Castle – if the deliberately laid out boundaries of Silver Bow County are examined; were all gathered into the fold for use in Butte and a distribution system was built. Then slowly and surely by not re- investing even a small fraction of the great profits had from mining in Butte the whole system was allowed to deteriorate and collapse into ruin until remedial action was forced because of public health issues. This is not the fault of the Anaconda company. Great profits- were had by ALL in Butte from mining in Butte and if the public did not see fit to maintain the system over the years through pressure on the operator, well then they ought to pay up the ante now through their taxes – not misappropriation of resource damage funds. This perpetual pity party that plays out in Butte makes me sick at my stomach. Somehow thinking that we are owed something for destroying the environment of western Montana and thinking that environmental restoration funds are acceptably spent on a task that the rate-payers should be taking on, just as they have do in Missoula, Bozeman, Helena and elsewhere around the state. Who pays to repair and upgrade all of those water systems? Not NRD funds i certain. There are many funding sources for municipal infrastructure upkeep and expansion including taxes, how many sources of funding are available for natural resource damage repair? There is an attitude on the part of so many in this town that we are somehow superior and are more entitled because mining took place here. I read many documents while preparing for the NRDA lawsuit and the common theme throughout was that all mining in Butte was done for and at profit – period. That means the Corporation made money and the people working for it made money and the community made money to produce copper and other valuable commodities and if they did not see fit to kick some back in to upkeep

of the water system that they depended upon, while they maligned and misused the environment in the course of mining so profitably' then tough noogies to us now. What brass to acquire wealth in doing a dirty deed for decades and then wanting somebody else to subsidize the misdeed in the end. There are also the ilk that feel we are owed this because Butte "won" World War Two and electrified the nation and on and on and on blah blah blah. This is a favorite sob story of so many as they polish a barstool at the Met tavern with their butt and refight The Big One on the 5200 hundred level of the Con, likely never having served in either one of them and recounting the Butte hero exploits to anybody buying a round. I am exceptionally proud of my town and my heritage which is why the misuse of these funds and the misreading of history anger me so greatly, These acts detract severely from what this community ought to stand for and where it has come from and most assuredly where it ever hopes to go. As i did my research for the NRDA lawsuit, i was stopped dead in my tracks when i encountered numerous documents of the Anaconda company talking about Copper production for profit during the height of WWII. Not copper production for the war effort with all stops pulled out, not copper production to insure that some GI would make it home alive, but copper production purely and simply for profit. The Company immediately went to the government and told them that the yoke of environmental protection was suppressing their ability to produce copper to get all of those regulations throw out and then they were off to the races. That means ACM made money, the copper miners made money and local shopkeepers made money etc etc etc all through the bloody and bitter conflict of very likely the greatest crisis the nation has faced and along with their profiteering they probably were not putting a thing back into their water system either. Opportunity mill tailings were allowed to blow around unhindered, Silver Bow creek was an industrial sewer, and we systematically fouled the nest we lived in, we, (us) the people of Butte – for profit. Millions dying world wide, Butte making handsome profits, and not to worry, one day down the line the NRD staff will repair our waterworks, life's good. This kind of thing does not make me very proud of my heritage or my town, especially when i see them in their ragged clothes asking for more money for the basic infrastructure that any self respecting community ought to take enough pride in to maintain and operate on their own. I will take page from the book of all those other Butte folks and tell my own war story here. Two Brother's went off toward World War Two; One, My Great Uncle Edward who volunteered and the other My Grandfather Arthur who was drafted. Uncle Ed was asked where he was from and what he did (Butte, Auto mechanic.) He was sent to Europe and left his lower leg in front of the machine gun of a Nazi tank – relegated to a long life of pain, discomfort, and disability well into his seventies. Grandpa got to Salt Lake City and was asked where he was from and what he did for a living (Butte, Copper Miner) and was told copper miners were more important than infantry men and was sent back home to the mines. In all the long, long years around the tables of numerous family gatherings never once did i see a spirited debate between brothers over the relative merit of copper mining versus defeating a nazi tank as far as these activities related to winning a World War. Nor did i ever in his entire life hear my uncle Ed utter a word of complaint or regret or a desire for something extra in payment for his leg. I wish Butte would get over their poor me and my broken down water line story and allow the NRD funds to go to repairing the environmental damage we, (us) – the people of Butte caused rather than lowering our taxes for political reasons – i could be a lot more proud of my community if we were allowed to pay our penance.

Far from paying our penance though, its business as usual here it seems. So many things i see indicate that the water system will be broken down and in the ditch again if left in local care or



unless subsidized in perpetuity by NRD money. The water utility is a power unto themselves. They are not accountable to anybody it seems. Not the citizenry, not the public service commission, not the NRD as i see it. When last i complained about Butte getting more water line repair money the hot and heavy debate was over the value of private industry versus local government expending the funds in a more cost effective fashion to effect the work. i had raised concerns about settling that debate and was told an accounting of the process would be done to document if the Butte Public Works department could pull off the work better than private contractors. i truly have no position on the matter, just wanted to see somebody study it and document it so we all know the funds are making the maximum impact for the minimum waste. Well, i have not seen any mention of an audit process or result of same and when i know that BSB got money to replace the high side concrete storage tank in Walkerville, and i am pretty sure that tank has not been replaced, i have to ask, where did the money go, did they ever get it, if the tank was not replaced why not, and if it comes up again, how much more will it cost the NRD or the taxpayers now compared to when it was supposed to be done? Also, could a private contractor have pulled it off? These are the kind of things that trouble me when free money is lying about. Then i see that attitude of the Butte water division and public works staff. They have no mind for water conservation at all which i feel they ought to be the champions of when all the issues of water here and world wide are considered. Public works staff have been seen expending massive amounts of water from a hydrant trying to wash a pile of dirt down the street in the middle of summer instead of getting a shovel and scooping it up and moving it, mind you, this is all while the citizens are under restrictions on their water usage to be good conservationists and de-facto are having their water rates doubled under the restrictions of only having use of their own water hose every other day. I had my own experience with a broken service line that required BSB to shut off the service. Well, with their archaic records they could not locate the shut off and it seems they have no interest in learning how their own system is laid out or works since it is not the first time i have encountered a similar problem. Well after milling about for a while with the water running and being wasted, the BSB guy says i will be back after lunch ( this is about 9:30 in the morning) Shuffling back after lunch he finally finds the valve and shuts off the water and as soon as it was determined that the leak was on the city side of the meter and not the rate payer's side the urgency increased dramatically. The meter reader was there immediately when they found nobody was on the hook for paying for all that wasted water that the guy let run for many hours. The Butte Government will not support removing mine wastes from the remaining areas of the alluvial aquifer, essentially abandoning a lot of water that folks could be using but this of course would be in direct competition with the over priced water BSB is peddling. This issue has recently come to the fore with the problems at the St. Patricks Cemetery. One of these issues being lack of available, affordable water to green up the graveyard as people would like it to be. Apparently city water is cost prohibitive and local groundwater is either insufficient, unavailable due to content or administrative restrictions because of the community misuse of, neglect of, and refusal to remediate their groundwater for a hundred years or more. I point all of these things out to demonstrate that as i see it, Butte still has no interest in acting correctly in treating water as the valuable and precious resource that it is limited, expensive, and all so very much needed by us all. They will not promote repair and use of the natural aquifer for very suitable uses like watering a cemetery so i do not see how they can make a case for lost resource being offset by repair to the water system. They continue to hammer Silver Bow Creek with their sewage treatment plant. They obviously are extremely poor in conserving themselves what they insist so vehemently that the rest of us conserve. They clearly do not care about

conservation at all if they think the guy with the meter is paying for the running water. Who cares if it is being wasted if somebody is paying for it, i'll be back after lunch and i won't be spending the interim time learning how my own water lines are put together either. In short, i think the town has an extremely poor mindset about the value of water and while it may be legal to give them NRD money, it just isn't right.

I have to ask why Anaconda's water lines would not merit funding while Butte's do? We steal the Silver lake water from Anaconda, we dump all of our milling and smelting wastes over a hundred years on Anaconda – wrecking their aquifer which would not be so otherwise, we fill milltown dam with mine waste and the people of Missoula raise a row and ruction and does the mine waste go back to the Butte mines from whence it came, nope, it goes on top of Anaconda. Why is it that destruction of their aquifer, waste and ruin of their natural landscape in perpetuity, and the stigma of having to live among all of BUTTE'S residue of copper mining profit for the rest of time does not merit water line funding while Butte's does? Even if it was not the letter of the law to repair Anaconda's water system it certainly is far more the spirit of the law to make the people of Anaconda whole in this fashion from where i sit.

The lawsuit providing these funds has been settled for about a decade now and the people of Montana still do not have full and reasonable use of Silver Bow Creek for all the money spent on the clean-up through the primary funding and the ancillary money given to things like the Greenway authority. How come? What are the citizens getting exactly for all of these grants to the greenway authority? No walking trail, no picnic tables, no rest stops to just sit and watch the stream go by. The stream itself is still essentially dead below the Butte sewage treatment out-fall and nobody is building a fire under the community to fix that, no, they are in fact getting new water lines so they can generate even more waste water on the front end to dump into the creek that we got the money to clean up after people kept dumping stuff into it. That all sounds like a nursery rhyme about Jack and house he built to me but rather than the Brother's Grimm, it is just plain grim. Why isn't the greenway money giving people access to their stream for beneficial use by now? Ten years is a pretty long time, i think some money could have gone to putting this all back into public use by now. We yell about private land owners blocking public roads to public lands, fencing off the forests for their own personal playground, and putting barbed wire right up to the public bridges denying access to public streams. We are prepared to go to the Supreme Court to defend the public's right to the beds of the streams in the state. Why then can't they even have use of Silver Bow Creek after ten years. Shouldn't something about Natural Resources restoration of lands lost to the public involve restoring the public use of the lands. If there is such an abundance of this free money lying around couldn't some actually go toward a walking trail or trout restoration or something that the people can use right now in the part of the project that we are told are cleaned up. Maybe, just maybe if the Butte water lines weren't sucking up so many resources that we had to raise the spending limits, people could be strolling along the stream on a pleasant summer evening right now rather than maybe never in the capable hands of the greenway authority and whatever they are blowing the dough on. If the limits on the dole-out are going to be increased can't we focus on doing some projects that will actually allow the public to have use of their property once more.

Finally, i would hope that the program becomes more proactive than it is in seeing that meritorious projects see the light of day and come to fruition. By that i mean maybe there are

valuable ideas out there in the minds of people who for whatever reason aren't bringing them to the program for consideration of funding while the usual suspects like BSB who know how to work the system elbow their way to the front of the line every year whether that storage tank gets replaced or not. The project staff perhaps should allocate some funds to work more on outreach to get the word on the street for more projects that might prove more valuable than Butte water lines and may make BSB take a back seat some years – or in my dream world forever. Or is that the last thing we would like to see – more competition for funds from sources that might not be plugged into the process.

There you have it. Let it not be said that there is no controversy over the process and i will not be so derelict in making my degree of dissatisfaction with the program known in future or will i be absent from the next presentation now knowing the consequences of instilling the idea that all is hunky and dory with the spending of NRD money with all of the citizens of the valley because the few attendees were all on board. I do respect and support the staff and all of the work that they do. Holding meetings in in the evening, all the leg work and efforts to make this process work as it should even if i feel it does not due to outside forces beyond their control. i have expressed my thoughts previously to these NRD staff members and thus felt that i would not trouble them this year but since the Standard ended up troubling my own mind in printing the absurd notion that because nobody came to complain everybody was happy with how this hard won money was being spent and accounted for i had to rain on the NRD to ease my own mind. A very wise professor of mine used to tell me that if you begin with a false premiss you are on the road that will bring you to absurdity and that is how i can sum up the Standard editorial of this morning. While this may not be the road to Rouen, as that is of course in France, its not a good road for the editorial staff to be on anyway i think.

I am also copying the Governor on this note.

Tom Bowler  
735 W Broadway  
Butte, Montana 59701

**Coleman, Kathleen**

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**From:** Hotmail\_RPMadison [RPMadison@hotmail.com]  
**Sent:** Friday, October 05, 2007 3:10 PM  
**To:** Natural Resource Damage Program  
**Subject:** Thompson Park Project

NATURAL RESOURCE DAMAGE PROGRAM  
THOMPSON PARK PROJECT

By Pete Madison in support of the Thompson Park Project

My name is Pete Madison, I reside at the Nine Mile in Butte. I represent myself, private citizen and the Mile High Backcountry Horsemen of Butte. I submit these comments in support of the Thompson Park Project.

When Butte initiated it's adopt a lot, street or area several years ago in an effort to clean up Butte-Silver Bow, I adopted the Thompson Park picnic area at Nine Mile and MHBCH adopted Thompson Park. Each year we conduct a clean up and maintenance effort and have been fairly successful in keeping the area policed up.

I have lived on the edge of Thompson Park for the past nearly 40 years. I have been a constant recreation user of the park as well as an observer of other users during that time. I ride my horse on the backcountry Thompson Park trails nearly every day and during the past several years have seen increasing use by hikers, bikers and horsemen. Unfortunately, I am seeing the opposite in the picnic areas. These areas used to be constantly used by families, groups, and other healthy activities but now the only use of the picnic areas is beer parties and vandalism. The picnic tables have all been destroyed or burned, I don't know of a single picnic table left, toilets are no longer usable, and fire pits no longer used. The roads are in bad shape and erosion is terrible. Runoff drains into Blacktail Creek, which ends up in the Clarks Fork River negatively impacting the fishery.

Erosion is also a problem on the backcountry trails and will only get worse with increasing use if proper actions are not taken soon. These trails need to be designated, re-engineered and designed and in some cases rerouted, and maintained.

I am encouraged by the cleanup efforts seem to work. Each year there is less and less litter. Maybe some people think twice about throwing their garbage out onto a clean area. I am also pleased by the cooperation between the Forest Service and Butte Silver Bow. The dedication between the parties to reclaim Thompson Park to its original intended use is evident. The recent signing of the cooperative management agreement should insure that Thompson Park will not be neglected in the future.

Thompson Park is a unique treasure that needs to be protected and enjoyed. No other Montana city has a resource comparable to Thompson Park. I strongly urge the Council to fund this project.

Ralph p Madison  
162 Nine Mile Rd.  
Butte, Mt, 59701

MONTANA DEPARTMENT OF JUSTICE  
 NATURAL RESOURCE DAMAGE PROGRAM  
 PUBLIC COMMENT PERIOD  
 ON THE DRAFT 2007 UPPER CLARK FORK RIVER BASIN  
 RESTORATION WORK PLAN

Held at:  
 War Bonnet Inn  
 2100 Cornell Street  
 Butte, Montana

wednesday, September 26, 2007

**COPY**

REPORTED BY:  
 Kimberly C. Carpenter  
 Butte-Silver Bow County Courthouse  
 155 West Granite Street  
 District Court, Department 2  
 Butte, MT 59701  
 (406) 497-6422

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wednesday, September 26, 2007

PROCEEDINGS

-000-

THE FACILITATOR: Hello, I'm Tom Mostad.

I'm with the National Resource Damage Program.

And I would like to reiterate that this portion of the meeting is a public hearing and is not for questions and answers. Your testimony will be recorded. There is no sign-up sheet or anything, so you can come up however you like and talk about any project that you would like.

The court reporter is Kim Carpenter. She will be taking down your words as well as she can. If you have written comments, could you please give them to her so she can better get your comments down in writing.

Both the hearing and the written comments will be provided to the Advisory Council, as well as the Trustee Resource Council and the Governor. We will be providing written comments -- I guess responses -- to your comments if they are needed. Those will be out in a few months.

I would like to ask you to speak at the podium so that you can be heard and your testimony can be taken. Could you please spell your name and give your address; and if you represent a group, please state them.

So, anybody that wants to be the first, just jump right in.

DORI SKRUKRUD: My name is Dori Skrukruud, D-O-R-I, S-K-R-U-K-R-U-D. My address is 155 west Granite Street, Butte.

I am here on behalf of the Greenway Service District that is -- represents both the Anaconda-Deer Lodge and Butte-Silver Bow counties, and would like to offer our support, again, and appreciation for the recommendation for funding for the Silver Bow Creek Greenway Project.

And we think it's an important project. We've been working so well with -- along with the remedy and restoration, the coordination. And there are a lot of folks in the community who are anticipating the opening and opportunity to recreate along a restored Silver Bow Creek.

Thank you.

MARK SWEENEY: I'm Mark Sweeney, Anaconda-Deer Lodge County Commission, M-A-R-K, S-W-E-E-N-E-Y.

I'm here in support of the three projects that interest us most: That's the Anaconda metering system, the Anaconda waterline and the Greenway. I also sit on that with Dori and Milo.

PH-1

PH-2

1 And these are very worthwhile projects to  
2 our community -- our county, in particular -- and have  
3 our full support and appreciation for all the effort  
4 going into this.  
5 Thanks.

6 NORTHEY TRETHERWAY: Hello. I'm Northey  
7 Trettheway, N-O-R-T-H-E-Y, T-R-E-T-H-E-W-A-Y. And my  
8 address -- home address is 3448 Wharton Street --  
9 W-H-A-R-T-O-N Street -- in Butte. PH-3

10 And I'm here on behalf of Project Green,  
11 which is an organization committed to helping Butte move  
12 forward. It's a nonprofit organization. And we have  
13 written letters of support. And I'm here to verbally  
14 mention our support for this Silver Bow Creek Greenway  
15 project, the Thompson Park project and the  
16 Butte-Silver Bow Big Hole drinking water transmission  
17 line.  
18 Thank you.

19 LOU EVELAND: My name is Lou Eveland. I'm  
20 a private resident. I live in Rocker. That name is  
21 L-O-U, E-V-E-L-A-N-D. PH-4  
22 I just want to comment as a citizen who has  
23 the pleasure of looking out on that restored creek every  
24 day and can tell you how it makes my heart feel. It's  
25 done so much for Butte. And I'm a transplant. I've only

1 been here -- what -- 27 years. But I tell you what, it  
2 has just been fabulous. Thank you guys, all, for your  
3 efforts.

4 RON HANSON: My name is Ron Hanson. I work  
5 as a planner for Powell County, Montana. I'm here on  
6 behalf of the county commissioners, the city council, the  
7 local parks commission, to speak in support of the  
8 Johnson Creek project.

9 There's two elements to it which are very  
10 important to the community. One is, obviously, the loss  
11 of service in providing the recreation opportunities.  
12 The other is the educational value that is being offered  
13 through -- assuming this project is funded -- through the  
14 schools. PH-5

15 And we've had fantastic cooperation through  
16 the school, in terms of use of their land; from the  
17 teachers, nothing but encouragement to have this kind of  
18 thing available for the younger students -- really  
19 tomorrow's leaders -- to help them identify and establish  
20 a set of values that I think will serve this valley very  
21 well in the future.

22 Did I spell my name? H-A-N-S-O-N, Ron.  
23 My address is 409 Missouri, Deer Lodge, 59722. I don't  
24 always do things in order.

25 CINDY MCILVEEN: Hello. Cindy McIlveen,

1 C-I-N-D-Y, M-C-I-L-V-E-E-N, 155 West Granite, Butte.  
2 And I'm here on behalf of Butte-Silver Bow  
3 and just wanted to not only show strong support, of  
4 course, for the Butte projects, but this year all the  
5 projects. They're all very worthwhile. And I appreciate  
6 your support and especially the support to raise the caps  
7 on all.  
8 Thank you. PH-6

9 SENATOR DAN HARRINGTON: Good evening. I'm  
10 Dan Harrington, H-A-R-R-I-N-G-T-O-N. And I am a state  
11 senator for Butte-Silver Bow. And also I am on the  
12 National Resource Damage Oversight Committee for the  
13 state legislature on the natural resource.

14 And I would just like to say that I feel  
15 one of the most important projects is the Thompson Park  
16 project. I think it's very important.

17 I would kind of like to go back to the  
18 point when the Columbia Gardens was closed in the early  
19 1970s, one of the things that was brought up is that  
20 Thompson Park should have been the area where the  
21 Columbia Gardens should have been moved to. It's an area  
22 that I think has a lot of possibility. And I'm just  
23 really excited for the fact that we are going to move  
24 into that direction. PH-7

25 Over the years, I did work as a supervisor  
1 on the Job Corps back in the -- actually, in the '60s --  
2 or '70s, when we did some work on the Thompson Park. But  
3 it's been many years since there's been much done with  
4 it. And I think we're going in the right direction with  
5 this, and I would hope that some day this would be an  
6 area that we could use for a park similar to that of the  
7 Columbia Gardens at one time.  
8 Thank you.

9 HAROLD GODTLAND: Hello. My name is Harold  
10 Godtland. That's G-O-D-T-L-A-N-D. I live at 1385 Janney  
11 Road.

12 I want to speak in favor of the Thompson  
13 Park area. I live up in that area. And I'm very excited  
14 to hear about you being able to go through those tunnels  
15 again and look at that magnificent trestle. It's quite  
16 an engineering feat, you know. People just take it for  
17 granted. But I've talked to some engineers, and they go  
18 there and they park and they marvel at the construction  
19 of it and how it was done in those days. You know, they  
20 didn't have the cranes and they didn't have the lifts.  
21 You look at those rivets and you look at the foundations,  
22 and I think it's a marvelous thing to do. So, I think  
23 it's a very good project. PH-8

24 Thank you.  
25 THE FACILITATOR: well, is there any more

1 comment?

2 I guess this will conclude the public  
3 hearing portion of our meeting tonight.

4 And I would like to say on the agenda is  
5 the address to send any written comments to. There is --  
6 this is the draft work plan, and this kind of has a more  
7 in depth look of each of the projects and our  
8 recommendations therein. And they are located on the  
9 back. You can take one with you if you would like.

10 Like I said, the schedule is that the  
11 public input will be given to the Advisory Council on  
12 November 13, and followed in early November or December  
13 this -- the information will be given to the Trustee  
14 Resource Council and then the Governor to make the  
15 decision.

16 Well, thank you for showing up tonight.  
17 And our cards and such are in the back there, too, for  
18 each one of us, if you would like to contact us.

19 Thank you.

20 (whereupon, the public comment period was concluded.)

21 \*\*\*\*\*

22  
23  
24  
25

1 REPORTER'S CERTIFICATE

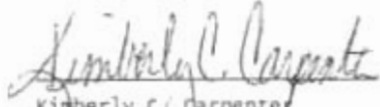
2  
3 STATE OF MONTANA )  
 ) ss.  
4 County of Silver Bow )

5  
6 I, KIMBERLY CARPENTER, an Official Court  
7 Reporter and Notary Public in and for the State of  
8 Montana, do hereby certify:

9 That said proceedings were taken down by me  
10 in shorthand at the time and place therein named and  
11 thereafter reduced to typewriting under my direction and  
12 control.

13 I further certify that the foregoing,  
14 consisting of Pages 1 through 10, contains a full, true,  
15 and correct transcript of the proceedings had,  
16 transcribed by me to the best of my knowledge and  
17 ability.

18  
19  
20 DATED this the 2nd Day of October 2007.

21  
22  
23 (Signature)   
 Kimberly C. Carpenter  
 Notary Public for the State  
24 (Seal) of Montana, residing at  
 Butte. My commission  
25 expires: July 17, 2010.