

**FINAL STATE OF MONTANA’S RESPONSE TO PUBLIC
COMMENTS ON THE “DRAFT UPPER CLARK FORK
RIVER BASIN TRUSTEE RESTORATION COUNCIL LONG
RANGE RESTORATION PRIORITIES AND FUND
ALLOCATION GUIDANCE PLAN” (DATED 8-29-11)**

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

DECEMBER, 2011

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**FINAL STATE OF MONTANA’S RESPONSE TO PUBLIC COMMENTS ON THE
“Draft Upper Clark Fork River Basin Trustee Restoration Council Long Range Restoration
Priorities and Fund Allocation Guidance Plan, dated 8-29-11”**

Section I. Introduction

At its August 29, 2011 meeting, the UCFRB Trustee Restoration Council (TRC) approved submittal of the “Upper Clark Fork River Basin Trustee Restoration Council Long Range Restoration Priorities and Fund Allocation Guidance Plan, dated 8-29-11, for public comment. The Natural Resource Damage Program (NRDP) advertised the release of this document, hereafter referred to as the “Draft TRC Proposal” for public comment in area newspapers in the Upper Clark Fork River Basin (UCFRB) and posted it on the NRDP website.

A total of 66 entities or individuals submitted formal comments during the public comment period, which ended on October 11, 2011. Of those 66 comment letters:

- 50 indicated overall support of the Draft TRC Proposal;
- 12 suggested one or more changes to the Draft TRC Proposal; and
- 4 commented on a certain element(s) of the Draft TRC Proposal, without any suggested changes to or position on the Draft TRC Proposal indicated.

On November 8, 2011, the TRC met to consider these comments and proposed changes to the Draft TRC Proposal based on them. The TRC approved a revised, “Proposed Final TRC Proposal”¹ for consideration and approval by the Governor. In December 2011, Governor Schweitzer approved the TRC’s 11-8-11 Proposed Final Proposal.

This document provides the State’s final response to comments on the 8-29-11 Draft TRC Proposal based on the Governor’s approval of the TRC’s 11-8-11 Proposed Final Proposal. Attachment 1 contains a list of commenters. Appendix 1 contains a copy of the public comment letters received.

The 11-8-11 Proposed Final TRC Proposal approved by the Governor, as well as the 8-29-11 Draft TRC Proposal, were based, in large part, on the 12-15-10 “Resolution by the UCFRB Remediation and Restoration 2010 Advisory Council for Adoption of a Long Range Restoration Priorities and Fund Allocation Guidance Plan.” This December 2010 consensus proposal from the Advisory Council resulted from consideration of public comment on an earlier draft version adopted by Advisory Council in September 2010. In December 2010, the NRDP prepared and distributed a draft response document to public comments on this September 2010 draft for the Advisory Council’s consideration at their 12-15-10 meeting. The NRDP did not, however, finalize this draft response document² given the decision by the TRC at its 8-29-11 meeting to revise the Advisory Council Proposal and solicit additional public comment on that revised document, the Draft TRC Proposal.

¹ Upper Clark Fork River Basin Trustee Restoration Council Long Range Restoration Priorities and Fund Allocation Guidance Plan, Proposed Final for Consideration of the Governor, dated 11-8-11.

² Draft State of Montana Response to Public Comments on the “Resolution by the UCFRB 2010 Advisory Council for Adoption of a Long Range Restoration Priorities and Fund Allocation Guidance Plan,” dated Dec. 14, 2010. This document is available from the NRDP upon request.

Section II. Summary Breakdown of Specific Comments on Each Section of Draft TRC Proposal and Responses to These Comments

Following is summary of the specific comments on each section of the Draft TRC Proposal and final responses to those comments that requested a change. No responses were needed for the comments that indicated support for a particular section.

Preface – 2 comments

- Two comments recommended reinstatement of the recitals/resolutions that were in the AC Proposal (7A, 16B).

Response: The TRC did not deliberate se recitals/resolutions, which are reflective of the Advisory Council’s deliberations and agreements. Like other portions of the AC Proposal that were of a background nature, they were deleted from the Draft TRC Proposal. An explanatory footnote was added to title of the 11-8-11 Proposed Final TRC Proposal to recognize that this document is, in large part, based on the AC Proposal, which will remain available as part of the public record associated with the development of a Long Range Guidance Plan.

UCFRB Restoration Priorities and Fund Allocations – 5 comments

- Five comments noted specific support for proposed fund allocations (7B, 9A, 19C, 65A/15B).³ Two of these comments specifically indicated support for the consideration of past expenditures in determining future allocations, noting that aquatic resources have not received adequate funding in the past due to litigation restrictions (7B, 9A).

Groundwater restoration funding process – 3 comments

- Two comments noted specific support for the proposed set-aside and process for Butte-Silver Bow and Anaconda-Deer Lodge County water system projects (14C, 19B).
- One comment noted specific support for the TRC’s clarifications regarding the groundwater funding process (64E).

Aquatic and terrestrial restoration funding process section – 51 comments

- Forty-four comments noted support for the TRC’s changes to this section (20-63).
- Two comments noted support for \$8 million set-aside and funding mechanism for completion of the Silver Bow Creek Greenway project (6, 64B).

³ In its comment letter (15B), the Confederated Salish and Kootenai Tribes (Tribes) incorporated by reference and indicated concurrence with the comments provided by the UCFRB Remediation and Restoration Advisory Council (65). This concurrence is reflected herein by citing these letters jointly. The Tribes also provided comments in addition to those of the Advisory Council that are separately identified herein.

- One comment noted specific support for the proposed 15% reserve for aquatic/terrestrial resources (13C).
- Two comments requested clarification regarding the TRC’s deletion of the reference to the Milltown Dam site in this section (65A/15B).

Response: The TRC revised the wording in the last sentence of the second paragraph of this section to clarify that the Milltown Dam injured resource area at, near and above the confluence of the Blackfoot River and Clark Fork River is a priority area eligible for priority aquatic and terrestrial funds. In addition, the TRC’s revisions clarified that all of the aquatic and terrestrial injured resource areas for which the State made restoration claims are to be considered priority areas by striking the phrase, “the mainstem Silver Bow Creek and Upper Clark Fork River injured,” in this sentence and inserting “all of the” in its place.

- One comment indicated concurrence with the Silver Bow Creek Greenway funding proposal, if the understanding is correct that the UCFRB Restoration Fund would be reimbursed for up to \$8 million in Greenway project expenditures from the leftover SSTOU remediation funds, if and when those leftover funds become available (65B/15B).

Response: This comment reflected the correct understanding of this “payback” provision in the Draft TRC Proposal and no additional clarifying language was deemed necessary.

- One comment advocated projects that enhance flows (1).

Response: The aquatic prioritization document was approved coincident with approval of 11-8-11 Proposed Final TRC Proposal. Such projects in priority areas would be eligible for priority aquatic funds pursuant to that document.

- One comment expressed concern about premature use of restoration funds in areas that have not been remediated and advocated that only projects that coordinate with remedy be eligible for funding in those areas (2C).

Response: This concern of premature use of restoration funds is adequately addressed under the “Results of Response Actions” and “Cost Effectiveness” NRD legal criteria that must be evaluated for all funding proposals. This criteria will be identified in the subsequent process plan and detailed restoration plans. Thus no changes were made to the Draft TRC Proposal as a result of this comment.

Funding recreational projects – 10 comment letters

- One comment noted specific support for the TRC’s revisions to this section that give greater flexibility to eligible recreation projects, noting that the claim for lost recreational opportunities was a major part of the lawsuit (64F).
- Eight comments requested that recreational projects be required to offer natural resource benefits as proposed in AC Proposal (2D, 4D, 7C, 9B, 13E, 17B, and 65C/15B). Reasons offered for this proposed change included: that funding projects strictly with recreational benefits can diminish the state’s ability to restore natural resources (7C); that carefully

developed resource restoration projects will provide secondary recreational benefits (65C/15B); and that it seems reasonable and wise to favor recreation projects that also offer resource benefits given limited funding and substantial uncertainty regarding restoration needs (9B, 17B). One of these comments noted specific support for limiting recreation projects to injured areas or priority sites identified in State's resource priority plans (7C); another noted the need for guidance on the type of recreational projects eligible for funding and priorities for recreational benefits (2D).

Response: In light of these comments, the TRC, in its 11-8-11 Proposed Final TRC Proposal, reinstated the more restrictive language, with some clarification, of the AC Proposal that would require eligible recreational projects to derive resource benefits. This change was made in recognition of the priority for natural resource restoration and limited funding. The TRC does not believe having this additional restriction is too limiting, because most of the recreation projects eligible for NRD funding are likely to derive resource benefits since the lost recreational service claim was focused on natural-resource based recreational services.

The NRDP has produced guidance⁴ that describes types of eligible recreational projects. This guidance will be referenced in the sections of the forthcoming process and restoration plans that address recreational projects.

- One comment recommended that recreational projects be secondary to restoration needs by assuring restoration needs are met first before spending significant funding on recreation projects (5C).

Response: Requiring recreational projects to derive both recreational and resource benefits as indicated in above response will help keep recreational projects secondary to resource projects. Through FY11, \$9.8 million, or 7.5% of the total restoration funding approved, was for recreational projects (see Table E in Attachment C of 11-8-11 Proposed Final TRC Proposal), and most of those projects provided some resource benefits. Future restrictions could be considered should this trend change.

Funding educational projects – 5 comment letters

- Three comments noted specific support for TRC's Proposal on the Clark Fork Watershed Education Program (CFWEP) funding process/timeline (2B, 11, 64D).
- One comment suggested that future education funding be evaluated after five years to encourage CFWEP's goal of becoming self-sustaining and assure that funds allocated to education do not take away from critical restoration needs (65D/15B).

Response: The evaluation of CFWEP's milestones and progress towards a self-sustaining program, which occurs currently on an annual basis, will now occur as part of the TRC's consideration of the CFWEP's budget on a biennial basis. Budget adjustments can take such progress reports into consideration. Through FY11, \$913,264, or 0.7% of the total restoration funding approved for all projects, was dedicated to educational projects (see Table D in Attachment C of the 11-8-11 Proposed Final TRC Proposal).

⁴ <http://doj.mt.gov/wp-content/uploads/2011/06/guidancerecreationalprojects.pdf>

SSTOU Remediation Fund Reminders – 61 comment letters

- Forty-nine comments indicated support for the TRC’s proposal to limit leftover funds for work in areas in or above the Lost Creek drainage (10B, 12B, 14B, 19C, 20-63, 64A/C). An additional comment clarified Butte’s preference for the Lost Creek boundary as proposed in the TRC Draft Proposal (#66). Reasons offered for this support included:
 - that the major contaminant sources and impacts occurred in these upstream areas and a greater allocation to upstream areas will improve the success of downstream projects (10B).
 - that substantial funding is needed for upstream areas due to inadequate “waste in place” remedy decisions at upstream sites, such as the Parrot tailings site (12B).
 - that these upstream areas are where the majority and most severe natural resource injuries occurred and should be the focal point of restoration investments (64A/C).
- Ten comments recommended changes to the SSTOU leftover provision, with three different types of proposals offered: AC Proposal approach; a funding boundary limit of Garrison or Deer Lodge; or a reserve fund.
 - Four comments suggested reinstating the AC’s proposal that the leftovers be used as a reserve fund for restoration of injured areas (5B, 15C, 17C, 65E). Reasons offered for this preference included:
 - that the AC Proposal offered a good compromise of targeting the Butte and Anaconda injured areas, but allowing funding in the upper Clark Fork/Deer Lodge injured areas if other available resources were exhausted (5B, 17C);
 - that the AC Proposal was a reasonable and balanced approach whereas the Lost Creek boundary excluded important priority areas, such as the Upper Clark Fork where remediation and restoration is just beginning, and lacked scientific and legal justification (15C); and
 - that the AC Proposal was a balanced compromise resulting from substantial public debate and consideration, and that geographic boundaries for future use of funds should not be so limited given the difficulty in predicting where there might be unfunded restoration needs (65E).
 - Four comments recommended changes to change boundary of funding eligibility to include areas upstream of Garrison (3B, 4C, 8, 13D). Reasons offered for this preference included:
 - that funding was needed for worthwhile restoration and recreational projects on/near the 21 miles of the Clark Fork River mainstem in Powell County (3B);

- that allocating these funds at/above Lost Creek drainage did not take into consideration the substantial mining contamination that remains on the Clark Fork River from Warm Springs to Garrison and the great potential that remains in improving the mainstem of the River and inappropriately excludes the Deer Lodge area (4C, 13D); and
 - that the Deer Lodge area has a lot of contamination and has not yet received much funding and a Garrison cut-off is more consistent with the lawsuit (8).
- One comment recommended two preferred alternatives to the Lost Creek cut-off, which the comment characterizes as arbitrary, inconsistent with NRD litigation, and unnecessarily limiting (9C): 1) keep the leftovers in reserve until remediation is complete in the Upper Basin to give the State a better idea where restoration could most effectively enhance remediation; or 2) if a boundary must be drawn, it would be better to make it above Garrison or Deer Lodge to ensure all “hard-hit” areas are eligible for funding.
 - One comment expressed opposition to the Lost Creek boundary as arbitrary and not based on restoration priorities or a detailed restoration plan and recommended an alternative that the leftovers be used as a reserve until restoration work is done at priority sites and then made available where contingency funds are needed to complete actual restoration work (7D).
 - One comment noted an expectation that the “State of MT will continue to faithfully perform the requirements of the CD and transfer all unexpended SSTOU funds into the Upper Clark Fork River Basin Restoration Fund.” (15C)

Response: After considering the substantial public input and debate on this section, as well as other approaches proposed by staff in 2008/09 and the Advisory Council in 2010, the TRC agreed with those who commented that the SSTOU leftover funds should be focused on the Upper Clark Fork River drainage at and above Deer Lodge with Cottonwood Creek being the northern boundary. This revised funding boundary is consistent with the findings of the NRD assessment upon which the lawsuit was based that the natural resource injuries were concentrated in the upper part of the Basin.

This decision on how to utilize the leftover SSTOU funds is consistent with the law and the governing consent decree (CD), which do not preclude the State from making a policy decision as where certain future restoration funding should be concentrated, provided that it is not arbitrary or capricious. This decision is not arbitrary or capricious given that the decision is to concentrate these funds in the most heavily injured areas; in fact, the decision makes a good deal of sense. At the appropriate time, these SSTOU funds would be transferred into the UCFRB Restoration Fund, as provided in the CD, and then they would be utilized, as provided above and in the 11-8-11 Proposed Final TRC Proposal.

Time Frame – 9 comment letters

- Four comments noted support for the proposed early restoration proposal process in 2012 (4B, 10C, 13B, 64G). Some of these comments also noted the importance of and indicate support for the proposed timeframe for developing the detailed restoration plans that will guide the post-2012 funding process (4B, 10C, 13B).
- Five comments advocated public involvement in the 2012 early restoration proposal process and in future restoration planning, to include participation of interest groups (4B, 5D, 13B, 17D, 18B). Two of these comments requested that these processes provide for the acceptance of project proposals from the public (4B, 13B).

Response: The process and detailed restoration plans will all be the subject of public comment. The early restoration proposal process will involve a solicitation of proposals from the eligible entities and the process plan will indicate how interested parties may become involved in the development of the detailed restoration plan.

- Five comments expressed concerns about and suggest changes related to assuring future funding decisions are based on detailed restoration plans.
 - Three comments emphasized the importance of/priority for the development of the detailed restoration plan and express concern about the depletion of the UCFRB Restoration Fund as a result of early restoration before a detailed restoration plan is completed (7F, 17D, 18C). Two of these comments suggested limiting expenditures to interest until the plan is completed (17D, 18C).
 - One comment recommended that the detailed restoration plans for aquatic and terrestrial resources guide all future funding, including early restoration proposals, and that a grants program consistent with these detailed plans be reestablished once they are completed (9D).
 - One comment expressed a concern that, absent a comprehensive restoration plan, the State cannot meet its trustee duty to ensure expenditures are the most efficient and effective use of the UCFRB Restoration Fund (15D).

Response: The TRC judged these concerns to be adequately addressed and mitigated with the revised language of the 11-8-11 Proposed Final TRC Proposal that requires the early restoration proposals to be located in the aquatic and terrestrial injured resource areas for which the State made restoration claims or in the priority areas identified in the State's aquatic and terrestrial priority plans referenced above.

Attachment 1. List of Commenters

| NRDP Comment # | First Name | Last Name | Company | City |
|---------------------------|--|------------------|---|-------------|
| 1 | T.J. | Laviolette | | |
| 2 | Pat | Munday | | Walkerville |
| 3 | | | Powell County Commissioners | Deer Lodge |
| 4 | Mary Ann | Fraley | Deer Lodge Mayor | Deer Lodge |
| 5 | John | Hollenback | Watershed Restoration Coalition | Deer Lodge |
| 6 | Milo | Manning | Greenway Service District | Butte |
| 7 | | | Missoula County Commissioners | Missoula |
| 8 | John | Hollenback | | |
| 9 | Bruce | Farling | MT Trout Unlimited | Missoula |
| 10 | Matt | Vincent | | Butte |
| 11 | Matt | Vincent | CFWEP/MT Tech | Butte |
| 12 | Fritz | Daily | | Butte |
| 13 | Kathy | Hadley | CFRTAC | Deer Lodge |
| 14 | Rose | Nyman | | Anaconda |
| 15 | E. T. Bud | Moran | Confederated Salishand Kootenai Tribes | Pablo |
| 16 | Brian | Holland | Project Green | Butte |
| 17 | Christine | Brick | Clark Fork Coalition | Missoula |
| 18 | Grant | Kier | Five Valleys Land Trust | Missoula |
| 19 | | | Anaconda Deer Lodge County Board of Commissioners | Anaconda |
| 20-63 | various members of the public, listed in detail separately | | | |
| 64 | | | Butte-Silver Bow Council of Commissioners | Butte |
| 65 | | | UCFRB Advisory Council | |
| 66 | Mick | Ringsak | | |

Appendix 1

Public Comments Received

Coleman, Kathleen

From: Troutwest@aol.com
Sent: Monday, September 12, 2011 9:02 AM
To: Natural Resource Damage Program
Subject: Damage Program

The Montana rivers and creeks are such a treasure to our wonderful state. This program and all thinking should be based on leaving water in the rivers and creeks. Over irrigating practices across the state leads to poor, if minimal flows and high water temperatures. State recreational use has gone up dramatically and measures must be taken to maintain adequate flows. Here we are in a record water year, and now in September look at the flows in various rivers and creeks. E.g.. Big Hole/ 340 c.f.s. , Sun River/ 150 c.f.s.. The creek I live on is completely dry. Lots of waters to list. Smith River. There is the damage. Set waters for adequate/ minimal flows and watch the rivers flourish.

T.J. Laviolette

Coleman, Kathleen

From: Pat Munday <pmunday1@yahoo.com>
Sent: Tuesday, September 13, 2011 10:31 AM
To: Natural Resource Damage Program
Subject: Long Range Plan Comment

2A Most elements of the Long Range Plan are good and reflect the hard work of the Advisory Council and NRD staff to manage the restoration fund. In reading it, I was seriously disappointed that it read like a Reader's Digest version of the original, detailed, and thoughtful plan developed by the Advisory Council.

2B Still, there are some laudable features. The funding process for CFWEP is especially praiseworthy, demonstrating both CFWEP's considerable achievements and the NRDP's commitment to long term education.

2C Though the issue is probably covered in other NRDP policies, I have some concern about projects proposed in areas that have not been remediated. Though the ROD came in some years ago, there is still no Consent Decree to implement remedy on the Butte Hill. NRD funds should not be spent in such areas unless they will be coordinated with remedy. For example, it would be wrong to construct mountain bike trails on the Parrot Tailings before remedy for that area has been addressed.

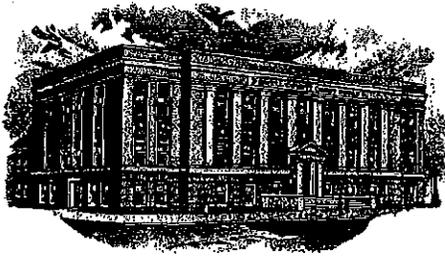
Similarly, the very large Superfund site known as Westside Soils (west and north of the Butte Priority Soils site) has not been addressed at all by EPA. NRD funds should not be spent on Westside Soils until there is a ROD and a plan for the remedy/cleanup.

I have one major objection to the proposed plan: it fails to supply guidance on what sort of recreation projects may be funded.

2D Clearly, many of the recreational projects to date have provided major public benefits through access to natural resources (e.g. Maude S. Canyon Trail) and the construction of infrastructure necessary to support public access (e.g. Milltown/Two Rivers Rec Facilities). As a guidance plan, the proposed plan should be more specific about priorities for recreational benefits. For example, would a public swimming pool rank equally with a creek-side trail?

ALL recreation projects should have some natural resource benefits attached to them in order to be eligible for NRD funding. For example, the new Maude S. Canyon Trail significantly reduced erosion (that was a problem with the old trail) and was laid out to avoid some critical habitat (the old trail/s went right through it). For example, the Butte Fishing Pond will create wildlife habitat (mostly for birds) in what is now a barren, ATV-abused landscape.

Thank you for this opportunity to comment,
Pat Munday
723 W Daly St
Walkerville MT 59701



DEER LODGE, MONT.

September 30, 2011

Via E-Mail and First Class Post

Trustee Restoration Council
The Upper Clark Fork River Basin
Natural Resources Damage Program
P.O. Box 201425
Helena, MT 59620

RECEIVED

OCT 06 2011

NATURAL RESOURCE
DAMAGE PROGRAM

Trustee Restoration Council:

The Powell County Commissioners welcome the opportunity to provide comments relating to the *Long Range Restoration Priorities and Fund Allocation Guidance Plan* composed by the Trustee Restoration Council. As County Commissioners, we acknowledge the dedication and effort Council members put forward to assemble a document that must accommodate a range of interests and priorities concerned with the health of natural systems found in the Upper Clark Fork River Basin. We also value the approach of the Plan to provide financial resources to State and local groups as a means to restore and rejuvenate the unique ecosystems that are inseparable from the Clark Fork River.

3A

Notwithstanding our overall support for the Plan, we wish to highlight an issue of concern to the County and that is the Council's decision to alter the geographic focus of the Plan from Garrison upstream to Lost Creek. We urge the Council to reconsider the proposed change, and return the focus to include areas starting from Garrison. We consider it is vital for the Plan to respect those twenty-one miles of the Clark Fork River through the heart of Powell County as a means to secure funding for worthwhile restoration and recreational projects. These projects have the ability to markedly improve the quality of life for County residents as well as the natural environments our residents cherish.

3B

Thank you for consideration of these comments. The acceptance of public comments will assist the Trustee Restoration Council to shape the final Plan and address the needs of communities throughout southwestern Montana.

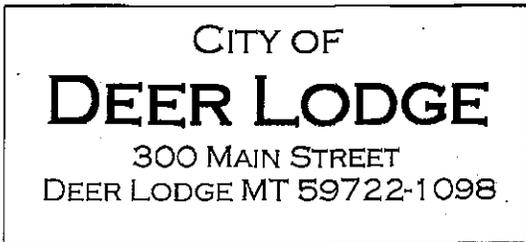
Powell County Commissioners.

Cele Pohle

Ralph Mannix

Donna Young

Mary Ann Fraley
Mayor
Mark McLaverty
City Attorney
Donna Seaton
City Clerk / Treasurer



CITY COUNCIL
DAVID AUSTIN
HELEN G. GILL
LYLE E. GILLETTE, JR
TOM GODDARD
EDWARD M. HEBBE IV
JOHN J. MOLENDYKE
REX ANDERSON
JACK HINKLE

RECEIVED

October 3, 2011

OCT 07 2011

Trustee Restoration Council
Natural Resource Damage Program
P. O. Box 201425
1301 East Lockey Ave.
Helena, MT 59620

NATURAL RESOURCE
DAMAGE PROGRAM

RE: Public Comment on NRDP Long Range Guidance Plan

Trustee Restoration Council:

We appreciate this opportunity to comment on the Natural Resource Damage Program's (NRDP) Long Range Restoration Priorities and Fund Allocation Guidance Plan. Development of a plan for funding restoration projects is crucial to a successful return of the Upper Clark Fork River Basin to prominence. The NRDP has the potential to greatly enhance the environmental quality and the economic prosperity of this region. We have always strongly supported a plan that addresses the priorities for funding restoration projects through the use of NRDP funds. We appreciate the time and effort that has been dedicated to this endeavor by NRDP staff, the NRDP Advisory Council (AC), the NRDP Trustee Restoration Council (TRC) and the Governor of the state of Montana.

4A

The Long Range Plan is a meaningful and necessary beginning to providing a guide to restoration activities in our area. Mostly the Long Range Plan is a good document that is a step in the right direction in terms of providing structure for plans that will provide for more specific restoration activities.

We applaud the Governor in his call for efficiency in promoting the restoration economy in the Upper Clark Fork River Basin. We support a program for funding restoration projects in 2012. We also agree with aggressive timelines for providing the public documents that will serve as the framework for restoration. The Long Range Plan is of crucial importance and its efficient and timely development is paramount. We hope that any restoration project program in 2012 be open to a public process and subject to public comment. The City of Deer Lodge made a pre-application to the NRDP Grant Program in 2010 with the hopes of submitting a grant application in early 2011. Grant

4B

applications were not accepted by the NRDP in 2011. So we have waited for a chance to submit our application for a project that will immediately show positive improvements in the water quality of the Clark Fork River. 4B

There is so much to be proud of in the Long Range Plan however, we feel that the boundary for funding projects with leftover funds from the Silver Bow Creek cleanup should not be set at Lost Creek. There is a great deal of mining contamination that remains on the Clark Fork River from Warm Springs to Garrison. Funding projects only upstream of Lost Creek does not take into consideration this contamination and the great potential that remains in improving the main stem of the Clark Fork River. The AC spent a good deal of time and effort in setting the Garrison boundary for funding. Bill Rossbach, AC Chair, made a point to inform the TRC that it was a work of "unanimous consensus" in developing the plan that set the border at Garrison. The boundary change excludes Deer Lodge from receiving funding from the leftover funds of the Silver Bow Creek cleanup. We feel it is important to move the boundary back to Garrison. 4C

The Advisory Council's Long Range Plan specified that any recreational projects should be funded only if such projects offer natural resource restoration benefits. We agree with the Advisory Council in that recreational projects should also offer restoration benefits. 4D

We appreciate the time and effort that has gone into the NRDP Long Range Plan. Thank you for this opportunity to provide comments.

Sincerely,

X *Mary Ann Fraley, Mayor*

Mayor Mary Ann Fraley

Watershed Restoration Coalition of the Upper Clark Fork

1002 Hollenback Road, Suite C

Deer Lodge, MT 59722

406-846-1703 X 111

RECEIVED

OCT 07 2011

NATURAL RESOURCE
DAMAGE PROGRAM

October 5, 2011

Ms. Vivian Hammill, Chair
Upper Clark Fork River Basin trustee Restoration Council
c/o NRDP, 1301 E. Lockey
PO Box 201425
Helena, MT 59620

Dear Ms. Hammill,

The Watershed Restoration Coalition (WRC) respectfully submits the following comments on the "Upper Clark Fork River Basin Trustee Restoration Council Long Range Restoration Priorities and Fund Allocation Guidance Plan." The WRC is a nonprofit watershed group, dedicated to restoring the natural resources and protecting the agricultural heritage and open spaces of the Upper Clark Fork River basin. As ranchers and landowners in the basin, we partner with stakeholders and agency representatives to implement Best Management Practices and stewardship projects that conserve natural resources on our land. The WRC has successfully coordinated on-the-ground conservation projects on private lands for ~~10~~ years. 5A

We've also been involved with the Natural Resource Damage Program for many years, and we're interested in seeing that the funds from this program are spent wisely. For that reason, we are glad that a long range funding plan is now close to completion. We think this fund allocation is a good step toward a more detailed restoration plan, and we support its passage, but there are a few changes we'd like to see before it is finalized.

First, we'd like you to keep the previous language developed by the Citizen's Advisory Council about the "leftover" remediation funds from Silver Bow Creek. That language struck a good compromise: it recognized the great need for additional funds in the Butte and Anaconda regions and it targeted the funds there, but it didn't completely exclude the upper Clark Fork and the town of Deer Lodge. It allowed some of those funds to be spent in our valley only if all other available resources were exhausted. Since cleanup on the upper Clark Fork hasn't even begun yet, and since the upper Deer Lodge valley and the town of Deer Lodge continue to suffer from the mining wastes from upstream, we respectfully request that injured areas in the Deer Lodge Valley not be completely excluded from these funds. 5B

Second, we think that the NRDP money should be spent mostly on real restoration, and recreational projects should take a backseat to that. There is a lot of cleanup yet to be done, and some of it is not even started yet. So before a lot of money is spent on recreation, we should make sure that restoration needs are met first. 5C

Finally, the WRC would like to be involved in any future restoration planning for natural resources in the Upper Clark Fork. As long-time residents, and as stewards of the natural resources on our land, we can contribute helpful knowledge and advice that will result in 5D

the best long-term restoration plan possible. Thank you for considering our comments.

Sincerely,

John Hollenback, Chairman

John Hollenback



Greenway Service District
Anaconda-Deer Lodge and Butte-Silver Bow Counties

RECEIVED

October 6, 2011

OCT 07 2011

Vivian Hammill, Chair, Trustee Council
Natural Resource Damage Program
P.O. Box 201425
Helena, MT 59620-1425

NATURAL RESOURCE
DAMAGE PROGRAM

**Greenway
Management
Board**

- Debbie DeLong
- Patty Hamblock
- Dennis Henderson
- Robert Macioroski
- Milo Manning
- Tim Norbeck
- Robert Pierce
- Joe Shoemaker
- Lorry Thomas

Re: Greenway Service District Comments on the Upper Clark Fork River Basin Long Range Restoration Priorities and Fund Allocation Guidance Plan (08-29-01 draft)

Dear Ms. Hammill:

Thank you for the opportunity to comment on the latest version of the Draft *NRD Guidance Plan (Plan)*, as released on August 29, 2011. The Greenway Service District appreciates the considerable efforts of the Governor's Office to take into consideration the number of comments received on the previous version and the subsequent proposed revisions to the Plan. At their September meeting, the Greenway Service District (GSD) Board endorsed the following comments in regard to the *Upper Clark Fork River Basin Long Range Restoration Priorities and Fund Allocation Guidance Plan - 08-29-11 Draft (Guide.)*

Again, the GSD commends the NRD Advisory Council for their efforts to develop and craft a consensus-based Guide; their outreach to groups such as the GSD, local governments and interested organizations was unprecedented. Many of our board members and citizens in both Butte and Anaconda have been involved with the NRD program for the past two decades. We appreciate the collaborative process and offer our comments at the request of the Trustee Restoration Council.

The GSD believed that this latest draft of the Guide clearly establishes that with limited funds, its priorities focus on the restoration of terrestrial and aquatic resources in priority injured areas that have yet to be funded with UCFRB Restoration Funds.

The Guide, setting aside a maximum of \$8 million for the completion of the Silver Bow Creek Greenway will allow the Greenway project to continue the critical integration of remedial and restoration components and maximize the use of these funds. The Guide's recommendation for sufficient funding for the completion of the Silver Bow Creek Greenway project is consistent with the terms and intent of the 2008 settlement for the three restoration claims - the Clark Fork River, the Anaconda Uplands and the Butte Area One - as well as the 2005 Milltown Dam settlement, that is to earmark restoration dollars directly to where damages occurred and take advantage of the benefits when integrating remedial and restoration work.

The GSD supports the amendments to the Guide to provide funding to complete the Silver Bow Creek Greenway and its vision to serve the Upper Clark Fork River Basin.

Sincerely,

James Milo Manning
James Milo Manning, Greenway Service District Board Chair

Information:

County Courthouse
800 S. Main
Anaconda, MT 59711
406/563-4011

- or -

County Courthouse
155 W. Granite
Butte, MT 59701
406/497-6469



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

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

BCC 2011-197
October 6, 2011

Ms. Vivian Hammill, Chairman
and Restoration Trustee Council Members
P.O. Box 200801
Helena, MT 59620-0801

**RE: LONG RANGE RESTORATION PRIORITIES AND
FUND ALLOCATION GUIDANCE PLAN**

Chairman Hammill and Restoration Trustee Council Members:

Missoula County has reviewed the Trustee Council's Draft for Public Comments, "Upper Clark Fork River Long Range Restoration Priorities and Fund Allocation Guidance Plan." We wish to provide the following comments:

Missoula County supported the Resolution by the Upper Clark Fork River Basin 2010 Advisory Council for Adoption of a Long Range Restoration Priorities and Fund Allocation Guidance Plan. We understand the decision not to include the resolution in the guidance plan, but feel it would be helpful as a preface to the plan. It provides the history and thought process for developing the plan. We continue to support the majority of the guidance plan as revised by the Trustees. 7A

We strongly support the proposed allocation of the restoration fund to priority groundwater, aquatic and terrestrial resources in proportion to the dollar amounts of the original restoration claims in *Montana v. Arco*. We also support the proposed allocation based on total expenditures from the fund since the inception of the grants program and interest accrued to date. Aquatic Resources have not received adequate funding through the grants program, and will not receive sufficient funding in the future, unless this provision is retained. Aquatic restoration was a primary goal of the State's litigation against Arco. It is critical that the guidance plan provide adequate funding for aquatic restoration. 7B

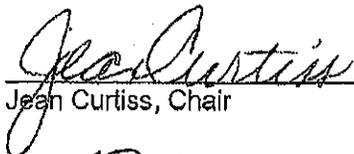
Funding Recreation Projects: The Trustees' proposed guidance plan removes language from the Advisory Council draft, stating that any recreational projects must "offer natural resource restoration benefits, not just recreational benefits." We support the use of funds for recreational access at Injured sites, or at priority areas identified in the State's aquatic and terrestrial priority plans, if such projects offer resource restoration benefits. We are concerned that the fund has been used in the past for recreational projects not located at restoration sites, which did not help restore natural resources. Projects with strictly recreational benefits deplete the restoration fund, and diminish the State's ability to restore the resources for which it sought damages in its litigation against Arco. 7C

SSTOU Remediation Fund Remainders: The 2008-2009 Restoration Fund road map would have made any leftover Silver Bow Creek remediation assets available for projects anywhere in the basin. The 2010 Advisory Council guidance plan would have allocated remaining funds to a reserve fund, available for restoration of aquatic and terrestrial resources in the injured areas of Silver Bow Creek, Butte Area One, Anaconda Uplands, Dutchman and Upper Clark Fork River. The Trustee's guidance plan would allow use of these funds only at sites upstream of Lost Creek. This is a political boundary, and it is not based on an assessment of restoration priorities in the watershed or a detailed restoration plan. We do not support establishment of this arbitrary boundary for use of the Silver Bow Creek leftover funds. **The Trustees' proposed guidance plan would appropriately designate these funds for restoration of terrestrial and aquatic resources, ensuring that the funds would be used for projects that meet the intent of the state's lawsuit against Arco. We believe that the fund should be maintained as a reserve, holding the funds until restoration work is done at the priority sites, and allowing the funds to be available for areas where contingency funds are necessary to complete actual restoration work.** The funds should not be made available immediately for infrastructure, historic interpretation, economic development or other projects unrelated to restoration at the priority sites that were subject of the State's litigation against Arco. 7D

Restoration Plan Development: We strongly support the Trustees' plan directing staff to ~~design a process within two months for developing a restoration plan for aquatic and terrestrial resources.~~ The guidance plan does not constitute a detailed restoration plan for the basin. We request that this be completed as the next priority in order to ensure appropriate use of the restoration funds over the long-term. We are concerned about the Trustees' plan statement that early restoration proposals will be entertained in 2012. The Restoration Fund should not be depleted before a detailed restoration plan is completed. 7E

Thank you for your consideration of these comments.

Sincerely,
BOARD OF COUNTY COMMISSIONERS



Jean Curtiss, Chair



Bill Carey, Commissioner



Michele Landquist, Commissioner

BCC/ppr
cc: Peter Nielsen, Environmental Health

Coleman, Kathleen

From: John <jcholl@blackfoot.net>
Sent: Thursday, October 06, 2011 10:39 AM
To: Natural Resource Damage Program
Subject: NRD Program Public Comment

COMMENTS ON ADVISORY COUNCIL PLAN

Remediation Fund

I strongly disagree with the leftover funds from SBC remediation. Having served on the council for many years, I think if you would go back on the law suit and study it you would find that the money should be available to Garrison. I talked this over with Jim Flynn and He says that from the beginning that was the way it should be. That would still give the up streams the opportunity to apply on an equal basis. I do not think you should take that right away from the rest of the Down stream. The Deer Lodge area has a lot of contamination and they have not received much of the money. I hope you will reconsider this and reverse it back to the way the law suit intended.

Thank you for serving.

Best,
John Hollenback



PO Box 7186 Missoula, MT 59807 (406) 543-0054

10 October 2011

Vivian Hammill, Chairwoman
Clark Fork Restoration Trustee Council
Box 200801
Helena, MT 59620-0801

Re: long range restoration priorities and fund allocation guidance plan for
Clark Fork NRD funds

Dear Ms. Hammill:

Thank you for the opportunity to comment on the Trustee Restoration Council's draft "Upper Clark Fork River Long Range Restoration Priorities and Fund Allocation Guidance Plan." Montana Trout Unlimited represents 3,400 conservation-minded anglers, including approximately 1,300 organized within the three TU chapters with a primary interest in the upper Clark Fork basin. We have participated in NRD-related decisions since the original natural resource damage litigation was revived in the late 1980s. We and our chapters have also received grant funding through the NRD program for projects that replaced and restored injured aquatic resources in the upper Clark Fork basin. We are committed to ensuring the NRD funds are spent effectively and efficiently in consort with the stated goals of the original litigation and the settlement decrees, which are to restore, replace or enhance injured aquatic, terrestrial and groundwater resources. Please consider the following recommendations.

Funding allocations

We strongly support the Trustee Restoration Council's proposed allocation plan for the three injured resources. The percentages dedicated for each resource tracks with the original claims the state filed, the litigation position of the State of Montana and the consent decrees that resolved the majority of the case. Hewing to these percentages fits squarely with the public's long-held expectations of how much settlement money would be directed to each resource. Further, we support the Trustee Restoration Council's proposal to include in its calculus how much has

9A

already been spent in grants for each resource. To date, grant expenditures for restoring, replacing and enhancing aquatic resources have been much less than those dedicated to groundwater and terrestrial resources. Some interpreted this as a sign of disinterest among the public or agencies in completing aquatics-related restoration work. However, among the primary reasons NRD funding has been limited for aquatics restoration projects is that NRD legal staff for years recommended grant funding for aquatics work in the Clark Fork corridor not be approved until a consent decree for the river was completed. This reduced funding opportunities significantly. Further, organizations such as TU have been waiting for FWP and the NRD program to complete their aquatics prioritization plan. By holding off on major proposals, it ensured improved coordination on priorities, better enabling efficient and effective expenditures. Today the picture is clearer and we have projects to recommend in consort with the agencies' priorities.

9A

Recreational projects

We are disappointed the proposed guidance plan eliminates the Advisory Council's recommendation that recreation projects "offer natural restoration benefits, not just recreational benefits." We support using NRD funds for creating or enhancing recreation. However, to ensure these investments are consistent with the original damage claims and the consent decrees, it seems reasonable to favor projects that offer multiple benefits. There will always be more recreational opportunities than funding available in the upper Clark Fork basin. So it makes sense for the State to ensure wise use of funding by favoring projects that offer both recreational and restoration benefits – especially because restoration or replacement of natural resources were the primary objectives of the claims.

9B

Leftover Silver Bow Creek Remediation Funding

The NRD staff proposed road map recommended that leftover Silver Bow Creek remediation money be placed into the general restoration fund for the whole upper basin. We supported this recommendation because it is consistent with the consent decree, which doesn't limit the geographic distribution of these funds. The Advisory Committee, after much discussion and a unanimous vote, recommended the money be put in a reserve for restoration of aquatic and terrestrial resources in Silver Bow Creek, Butte Area One, the Anaconda Uplands, Dutchman Flat and upper Clark Fork River Superfund areas. The Trustee Restoration Council recommends the money be spent only at sites in and upstream of the Lost Creek watershed, a significant diminishment in scope to both the NRD staff and Advisory Committee's recommendations, which have a basis in the consent decrees and public expectations.

9C

The Trustee Restoration Council's recommendation is not consistent with the outcome of the NRD litigation and it seems arbitrary and unnecessarily limiting. We recommend the Trustee Restoration Council modify its proposal to allow the leftover money to be spent in the upper basin, perhaps limit it to above Garrison or

Deer Lodge to ensure all hard-hit areas are eligible for this funding. Alternately, the Trustee Restoration Council could recommend this money be put into a reserve fund, only to be tapped once remediation is complete in the upper basin. At that time the State will have a better idea where restoration could most effectively and efficiently enhance remediation. It may be that the money is best spent above Lost Creek, or it may be that it will be available for valuable projects downstream. The problem with limiting this funding to Lost Creek and upstream is that good, cost-effective projects that leverage other funds could go wanting simply because they are downstream of Lost Creek. And in turn, projects with less value would get funded simply because they are upstream of this arbitrary boundary. If a boundary must be drawn it would be better if it included a larger portion of the damaged area, which is why Garrison or Deer Lodge makes much more sense.

9C

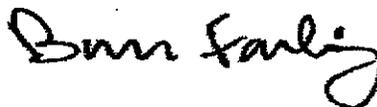
Developing Restoration Plans

We agree with the Trustee Restoration Council directing NRD staff to devise a process for developing a restoration plan for aquatic and terrestrial resources. We're not sure this can occur within two months, but certainly now that FWP has completed its prioritization plans, and organizations such as ours and the Clark Fork Coalition have identified potential projects, it shouldn't take very long. This blueprint, however, should guide all funding from this point on. We believe all projects now being contemplated, including the "early restoration proposals" the Trustee Restoration Council is recommending be favored in 2012, be coordinated with the restoration plans. Once restoration plans are completed, we recommend the Advisory Council and Trustee Restoration Council re-establish a grant program for spending a portion of the remaining funds, consistent with the restoration plans and priority resources.

9D

Again, thanks for the opportunity to comment. We look forward to our recommendations being seriously considered.

Sincerely,



Bruce Farling
Executive Director

cc.
Attorney General Steve Bullock
Director Mary Sexton
Director Joe Maurier
Director Richard Opper
William Rossbach

MATT VINCENT

for CHIEF EXECUTIVE 2012

Date: October 10, 2011

To: Montana Department of Justice
Natural Resource Damage Program
1301 E. Lockey
P.O. Box 201425
Helena, MT 59620

From: Matt Vincent (as a private Butte citizen; candidate for Butte-Silver Bow Chief Executive 2012)
P.O. Box 830
Butte, MT 59703

RE: DRAFT Upper Clark Fork River Basin Trustee Restoration Council Long Range Restoration Priorities and Fund Allocation Guidance Plan

Dear Trustee Restoration Council:

I would like to state my emphatic support of your revised Long Range Guidance Plan and encourage you finalize it for the following reasons:

1. The plan is straightforward and clear in its presentation and subsequent implementation, should it be approved.
2. The plan is the best interpretation to date of the damages that have occurred as a result of historic mining, milling, processing and smelting of ores, particularly in its allocation of the Silver Bow Creek reserve funds to those proposed projects located in the Butte and Anaconda areas. The section of the watershed above the Lost Creek confluence is the location of the sources of contamination that has resulted in the need for the Upper Clark Fork Superfund site, the Montana v. ARCO lawsuit and the most significant part of the remediation and restoration. This more-adequate allocation of Silver Bow Creek reserve funds will add insurance that the contaminant sources in the Clark Fork headwaters will be addressed, thereby improving the success for downstream remediation and restoration projects, as well as better ensuring the long-term health of the entire basin.
3. The plan adequately and thoughtfully delineates and includes clear and effective guidance on the funding of groundwater, terrestrial, aquatic,

10A

10B

10A

recreational and educational programs, as well as administrative costs and monitoring and maintenance needs.

4. The plan allows and includes a reasonable time frame for addressing restoration needs in 2012, as well as the future (20 years).
 5. The plan includes direction and time for development by NRDP staff of a more detailed restoration plan for projects post 2012 and acknowledges a need to ensure accountability, efficiency and effectiveness of funds expenditures every five years.
-

102

I thank you for your consideration of these comments and look forward to your decision. I can be reached via the address above or via telephone/email at 565-0234, mattvincent.butte@gmail.com.

Sincerely,

Matt Vincent

Matt Vincent



MontanaTech

Date: October 10, 2011

To: Montana Department of Justice
Natural Resource Damage Program
1301 E. Lockey
P.O. Box 201425
Helena, MT 59620

From: Clark Fork Watershed Education Program (Cfwep.Org)
Department of Technical Outreach
Montana Tech of the University of Montana
1300 West Park Street
Butte, MT 59701

RE: ***DRAFT Upper Clark Fork River Basin Trustee Restoration Council Long Range Restoration Priorities and Fund Allocation Guidance Plan***

Dear Trustee Restoration Council:

This letter is to commend you on completing the revisions to the Long Range Guidance Plan and to provide comments relative to the "Funding educational projects" on page 5 of the draft document.

We at Cfwep.Org and Montana Tech and on behalf of our partners with the Birds Eye View Education Program (BEVEP) at University of Montana would like to express its gratitude and acknowledgement as it relates to the council's commitment and support of education in the future of Upper Clark Fork restoration. We feel strongly that we are indeed up to the task of continuing our exceptional educational services and remain committed to striving for excellence, sustainability and accountability in our programs.

We are thankful for the opportunity to continue our working relationship with the council, the Advisory Council, our evaluation committee and the staff at the Natural Resource Damage Program to provide the best and most relevant educational materials and programs (base-level, Milltown and Birds Eye View Education Program) as they relate to the remediation, restoration, history and future of the Upper Clark Fork. There are thousands of students, teachers and citizens in the basin who will be thankful as well. Stewardship of our future generations will largely determine the long-term success of the restoration, and education is the best possible investment we can make in establishing stewardship.

We sincerely thank you for considering our comments,

Matt Vincent

Matt Vincent, Cfwep.Org Director,
on behalf of the other staff at Cfwep.Org/Montana Tech and the BEVEP/University of Montana

Golden, Michelle

From: Fritz Daily <buttedaily@bresnan.net>
Sent: Monday, October 10, 2011 1:10 PM
To: Golden, Michelle
Subject: Fw: Advisory Council's Long Range Guidance Plan
Attachments: EPA Letter June 21, 2011.docx; NRD Guidance Document 1.docx; Guidance Document 2.docx

Michelle,

I received a message reply from Carol Fox requesting I send this email to you. If you have questions, let me know?

Fritz Daily

----- Original Message -----

From: Fritz Daily

To: cfox@mt.gov

Sent: Monday, October 10, 2011 12:44 PM

Subject: Advisory Council's Long Range Guidance Plan

Carol,

Please include the attached letters and an email to the Butte Natural Resource Damage Committee I will send in a separate email as part of the official record on the Advisory Council's Long Range Guidance Plan. I checked with Mick Ringsac and he advised me to email the info to you. Please let me know that you received this information.

Thanks,

Fritz Daily

RECEIVED
OCT 11 2011
NATURAL RESOURCE
DAMAGE PROGRAM



Fritz Daily
1901 Roosevelt Ave.
Butte, MT 59701

October 10, 2011

Natural Resource Damage Program
P.O. Box 201425
Helena, MT 59620-1425

To Whom It May Concern,

As a person who was directly involved in the initial decision making process to proceed or not to proceed with the Natural Resource Damage Lawsuit, I would like to go on record as supporting the Advisory Council's Long Range Guidance Plan. I would also like my thoughts to be included in the official record.

I would like to preface my remarks by stating that I am currently a member of the Silver Bow Creek Headwaters Coalition who has filed a Declaratory Judgment against the State of Montana addressing the name change to Silver Bow Creek flowing through Butte. Jim Goetz and Zack Strong of the Goetz, Gallik & Baldwin law firm from Bozeman, Montana represent us in the lawsuit.

12A

As I stated in a letter written on November 26, 2010 my main reason I am supporting the Document is the confidence I have in Jim Kambich and Mick Ringsac who are members of the Committee and Pat Cunneen who is the State employee for the Butte Natural Resource Damage Program. I am confident that with the guidance from these men that the document is prepared in the best interest of the residents of Butte Silver Bow and the entire Clark Fork Basin.

In particular, I support the decision and the work by these men and Governor Schweitzer to spend the remaining Silver Bow Creek Cleanup dollars for cleanup and restoration from Warm Springs Creek to Butte.

Butte Silver Bow faces some unique challenges in the Superfund cleanup and restoration process. To be frank, the Environmental Protection Agency has failed terribly the residents of Butte. I am sad to say the State of Montana and the Butte Silver Bow local Government supported these inferior cleanup decisions. The Atlantic Richfield /British Petroleum Company and the Environmental Protection Agency did not clean Butte's Historic Silver Bow Creek Channel, the Butte Hill, the Parrot Tailings area and the entire Butte Priority Soils area to a quality standard.

12B

As a result, we must now use restoration dollars to remove the Parrott Tailings and responsibly clean Buttes' Historic Silver Bow Creek Channel and the Butte Hill. There is no question; these cleanups should have been completed as part of remedy.

To emphasize my point, I attended the Butte Silver Bow Natural Resource Damage Committee this week. Joe Veranka of the Montana Environmental Protection Agency made a presentation on why the Agency supports leaving the Parrott Tailings as "waste in place" even though he publicly stated, "he is fully supportive of any and all efforts to remove the Parrott Tailings!" As a matter of record, he also publicly confirmed that the Diggings East and numerous other contaminated tailings along the corridor should be removed in order to have a responsibly cleaned Silver Bow Creek Channel. In response to a question from the Committee an Atlantic Richfield Company/British Petroleum representative confirmed, "forty to fifty percent of the contamination flowing to Silver Bow Creek was coming from the Parrott Tailings area."

12B

The Butte Natural Resource Damage Restoration Committee is a dedicated group of Butte residents who are in the process of developing a responsible restoration plan for cleaning and restoring Butte's Historic Silver Bow Creek Channel, the Butte Hill, the Parrot Tailings area and the entire Butte Priority Soils area. *I am confident they will prepare a plan that will address many of the areas of cleanup addressed by the Advisory Council's Long Range Guidance Plan that the Environmental Protection Agency did not responsibly address during remedy.*

I could go on and on about the incompetent cleanup decisions made in Butte. Instead, I am enclosing the letter I wrote on November 26, 2010, a letter I wrote to Julie DalSoglio of the Montana Environmental Protection Agency on April 12, 2011 and a recent email I sent to the Butte Natural Resource Committee. I ask that they become part of the official record to demonstrate why I support the Advisory Council's Long Range Guidance Plan and using the remaining Natural Resource Damage dollars to responsibly clean the Butte area.

Sincerely,

Fritz Daily

cc Interested Butte Residents and Press

Golden, Michelle

RECEIVED

From: Fritz Daily <buttedaily@bresnan.net>
Sent: Monday, October 10, 2011 1:11 PM
To: Golden, Michelle
Subject: Fw: Proposal

OCT 11 2011

NATURAL RESOURCE
DAMAGE PROGRAM

Michelle,

I received a message reply from Carol Fox requesting I send this email to you. If you have questions, let me know?

Fritz Daily

----- Original Message -----

From: Fritz Daily

To: cfox@mt.gov

Sent: Monday, October 10, 2011 12:46 PM

Subject: Fw: Proposal

Butte Natural Resource Damage Committee Members;

On September 23, 2009, I wrote Governor Schweitzer a letter requesting him to use a portion of the remaining funds from the Silver Bow Creek Cleanup from Butte to the Warm Springs Ponds to remove the Parrott Tailings and responsibly clean the Historic Silver Bow Creek Channel flowing through Butte. 12B

There is absolutely no question that with the information presented prior to the Record of Decision on Butte Priority Soils, that a responsible decision should have been made as part of remedy to remove the Parrott Tailings and the Historic Silver Bow Creek Channel should have been cleaned to a quality standard. It is a "no brainier" as far as I am concerned. Even though I strongly believe the Atlantic Richfield Company should have been held accountable for responsible cleanup of these areas, that is not going to happen because the Environmental Protection Agency refuses to mandate the cleanup as required under Superfund Law.

The recent information developed by the Montana Bureau of Mines such as to the degree of contamination in the area and to the elevated movement of the groundwater confirms that fact. In addition, if the recent Unilateral Order by the EPA to stop Butte Silver Bow from watering the ball fields and grass at the County Shops doesn't tell everyone involved the seriousness of the situation, I don't know what would.

As a person who has followed this issue closely, I along with numerous others including I am sure members of your group, believe it is now time to make a strong push forward to have the tailings removed and the Historic Silver Bow Creek Channel cleaned to the same quality standard as the Creek from Butte to the Warm Springs Ponds. This could be accomplished by using the remaining \$35 million from the Silver Bow Creek cleanup or to use the remaining monies from the original \$118 million to accomplish that goal. Time is of the essence! I believe we do have a friend in Governor Schweitzer and who knows who the next governor will be.

I would strongly encourage the Butte Natural Resource Committee that has looked closely at this issue to prepare a proposal to present to the Upper Clark Fork Advisory Council to accomplish that goal.

I have attended some of your meetings and I feel you group is truly a quality group of dedicated Butte residents that has the expertise and the knowledge to bring forth such a proposal. With the assistance of Nick Tucci and Butch Gerbrandt of the Montana Bureau of Mines, who I believe know more about the characteristics of the area than anyone else involved in the process, that the Removal of the Parrott Tailings and a responsible cleanup of the Historic Silver Bow Creek Channel could be accomplished.

I encourage you to prepare and put forth such a proposal! If I can be of assistance please let me know? I have attached a copy of the letter I wrote to Governor Schweitzer.



Fritz Daily
1901 Roosevelt Ave.
Butte, MT 59701

June 21, 2011

Julie DalSoglio, Director
U.S. Environmental Protection Agency
Montana Office
10 W. 15th. Street
Helena, MT 59626

Dear Ms. DalSoglio,

I am writing this letter in strong support of the Citizens Technical Environmental Committee's effort to improve the Environmental Protection Agency's outreach for Superfund in the Butte Montana area. Also, please include my letter as part of the official record concerning this issue.

I would like to preface my remarks by stating that I am currently a member of the Silver Bow Creek Headwaters Coalition who has filed a Declaratory Judgment against the State of Montana addressing the name change to Silver Bow Creek flowing through Butte. Jim Goetz and Zack Strong of the Goetz, Gallik & Baldwin law firm from Bozeman, Montana represent us in the lawsuit.

As a former seven-term Montana Legislator, I have been actively involved in Butte and Montana Superfund issues since the early 1980's. I have written numerous letters and have expressed frustration in open meeting concerning this issue. I strongly believe the only reason the Environmental Protection Agency ever seeks public input is to satisfy the requirement of public participation required in Superfund Law.

I could write in this letter about my involvement and dissatisfaction with the decisions made on the Butte Hill, the Berkeley Pit, Yankee Doodle Tailing Pond, Opportunity Ponds or other issues, but because of space and time I will specifically address the issue of the Parrott Tailings and Silver Bow Creek flowing through Butte. **It is important to point out that the decisions made on these areas are forever decisions and will have forever consequences!**

- On September 26, 2006 the Montana Department of Environmental Quality in a letter to the Environmental Protection Agency writes, "DEQ does not concur with the over reaching decision to leave accessible, major sources of groundwater contamination in place. We refer specifically to the Parrott Tailings, Diggings East tailings and the North Side Tailings. Our concern is that leaving these wastes in place poses a significant and permanent threat to groundwater and to the long-term water quality of Silver Bow Creek." This advice was completely ignored in the Record of Decision.

12B

Butte's portion of Silver Bow Creek should be a quality meandering creek that will allow for children to play and fish and to provide for other amenities that will allow the adults in the community to enjoy the benefits of the cleanup as well. To provide anything less is a total insult to the community and nothing less should ever be accepted!

12B

Fritz Daily

- In April 2009, we learned that the **groundwater in this area is more toxic than Berkeley Pit water**. The Record of Decision again was made without this critical and valuable information.
- In March 2010, we learned that there was **substantially more water flowing to Silver Bow Creek than originally projected**. An isolation test was conducted to determine the actual amount of flow and from where the water along Silver Bow Creek was flowing. The actual flow was estimated at 100gpm and the test show it to be 500+ gpm. Again, the Record of Decision was made without this critical information.
- In July 2009, we learned that the Montana Bureau of Mines was **drilling 20 new wells in the area to determine the depth and scope of the contaminated tailing in the Parrott Tailings area**. The fact that the Record of Decision was made with out knowing the depth and scope of the tailing in the area. Unbelievable!
- In February 2011, a pump test conducted by the Montana Bureau of Mines. *We now learn that the groundwater in the Civic Center and Parrott Tailings areas is moving at a rate of 120 to 640 feet per day. When the decision was made by the EPA to not remove the Parrott Tailings, it was estimated that the groundwater flow above Harrison Avenue was at a rate of 2.5 feet per day.* Below Harrison Avenue, it was estimated that the groundwater was flowing at a rate of 15 feet per day when in fact we now know that it is flowing at a rate of 480 to 1000 feet per day. Quite a substantial difference. Again, the Record of Decision was made with out this critical information.
- We learned this year of a publication from August 2005 called "**Cut and Run**" that was issued by a reputable group of local Hydrologists and Hydro- Geologists seriously criticizing the preferred alternative chosen by the EPA on the Record of Decision on Butte's portion of Silver Bow Creek and removal of the Parrott Tailings, and ignored by the EPA. This is a quote from that publication; *The U.S. Environmental Protection Agency is prepared to walk away from the nation's largest Superfund site. More precisely, EPA is prepared to allow the responsible party, Atlantic Richfield Company (now British Petroleum/ARCO), to walk away without fully cleaning up the site. As a result, millions of cubic yards of mine tailings, smelting slag and other wastes will drain in perpetuity into the headwaters of the Clark Fork and Columbia Rivers. And the City/County of Butte-Silver Bow will be relegated into an industrial waste heap with dim economic prospects for recovery.* There is no question these toxic tailings are already recontaminating Silver Bow Creek, below Montana Street, that the State of Montana has already spent over \$40 million to clean.
- ARCO and the EPA continue their **band-aid approach to cleaning and restoring the Creek** by now pouring pink concrete to correct the erosion problems caused by the incompetent decisions already made.
- I have been told by folks directly involved in the process, that the "site conceptual model" being developed by Arco detailing the amount of groundwater being captured in the Reverse French Drain System, indicates the system is not collecting the amount of groundwater as Arco and the EPA believed it would. I understand the site conceptual model is not working near as well at they expected it would.
- In an April 12, 2011 in a letter to the Environmental Protection Agency from Senator Jon Tester he states, "Upriver in Butte, it is my understanding that new data shows that far more groundwater is moving through tailings than expected, and it is not clear whether that water is being captured."

12B

- I would also point out that the French Drain System designed to capture the contaminated groundwater has been "jetted" {cleaned} on numerous occasions because of a chemical precipitate blockage. This jetting will be required in perpetuity to keep the French Drain clear. An obstruction of the French Drain reported in August 2007, was due to some kind of chemical precipitate adhering to the inside of the pipe and completely plugging off all flow from above Harrison Ave. The gravel base surrounding the French Drain may also become a plugging issue in the future.
- Using a blimp, a site test was conducted in the spring of 2011 to determine the flow of a contaminated groundwater plume contaminating Blacktail Creek in the Oregon Avenue area. The results of this test are not yet published. It is believed that this contamination is coming from the Parrott Tailings area and a further test will be conducted by the Montana Bureau of Mines in the fall of 2011 to determine that information.

12B

These are just some of the facts and information I have received and have accumulated since the Record of Decision was established on the Parrott Tailings and Silver Bow Creek flowing through Butte. All of these issues have been articulated to the Environmental Protection Agency and the State of Montana on numerous occasions by many others and me and they have been ignored in the decision making process. This is why I strongly support the efforts of the Citizens Technical Environmental Committee's effort to improve the Environmental Protection Agency's outreach for Superfund in the Butte Montana area.

Sincerely,

Fritz Daily



Fritz Daily
1901 Roosevelt Ave.
Butte, MT 59701

November 26, 2010

Natural Resource Damage Program
P.O. Box 201425
Helena, MT 59620-1425

To Whom It May Concern,

As a person who was directly involved in the initial decision making process to proceed or not to proceed with the Natural Resource Damage Lawsuit, I would like to offer my thoughts on the Advisory Council's Long Range Guidance Plan. I would also like my thoughts to be included in the official record. I wish the Council luck and success in their deliberations.

I would like to state emphatically that the Natural Resource Damage Lawsuit and Program were never intended to be a "Pot of Gold Slush Fund" for the Montana Department of Fish Wildlife and Parks as now seems to be the case.

Over the years, I have written well over 100 letters and emails addressing the cleanup and restoration of Butte and Anaconda and the various other Superfund Sites in the Silver Bow Creek and Clark Fork River Basins. I find it almost amusing that I am writing another letter.

Instead of addressing these issues over again, let me offer a few thoughts from some of these letters and offer my support in the decision making process to Jim Kambich, Mick Ringsac, and Pat Cunneen who are now involved in this process. It is just too bad that these folks were not involved in the process from the "get go" and we would not even be having this discussion today.

I am confident that with the guidance from these men that the 2010 Advisory Council will make the best decision possible for Butte and for the entire Clark Fork Basin! Sadly, the 2010 Advisory Council is now in the very difficult position of restructuring a system controlled in the past by folks making political decisions rather than responsible restoration decisions, as should have been the case.

- 87% of the \$765 million claim filed in court was for damages that occurred in Butte, Anaconda and on Silver Bow Creek. Sixty percent of the Suit was to compensate the residents for the lost use of those resources over the hundred plus years of mining. Forty percent of the claim was to restore areas to productive use that can never be repaired through the normal reclamation process.

12B

- **I stress the importance of Butte and Anaconda in the shaping and creating of this great Nation. I point out the ore from the Butte Hill was used to electrify and to create the communication systems throughout the United States. And most importantly ore from the Butte Hill has been used to build the materials that were necessary to defend this country during times of war.**
- **The Natural Resource Damage Program is about restoring the Butte Hill, the Berkeley Pit area, Silver Bow Creek, the Yankee Doodle Tailing Pond area, the Anaconda Smelter area, the Warm Springs and Opportunity Ponds areas, and restoring all of the other areas damaged by mining in the Upper Clark Fork Basin.**
- **Always remember that no matter what happens in Missoula or anywhere else, that if you do not have responsible cleanup and restoration in Butte and Anaconda you will never have a responsible cleanup and restoration in the rest of the Basin. Whatever happens at the Berkeley Pit and the cleanup of the Butte Hill and Silver Bow Creek in Butte is going to happen to Deer Lodge, Missoula, Saint Regis and Portland Oregon! Let us make sure Butte and Anaconda are dealt with responsibly so that the millions of dollars already spent on cleanup up and down the Basin are not for Naught.**
- ***Butte's portion of Silver Bow Creek should be a quality meandering creek that will allow children to play and fish and to provide for other amenities that will allow the adults in the community to enjoy the benefits of the cleanup as well. To provide anything less is a total insult to the community and nothing less should ever be accepted! Using the remaining funds from the Silver Bow Creek cleanup from Butte to the Warm Springs Ponds to aid in that restoration would help accomplish that goal.***

12B

I also wrote Governor Schweitzer a letter on September 9, 2009 and I made a presentation to the former Advisory Council's during their past deliberations on preparing the "roadmap." I encouraged them to designate the remaining funds from the Silver Bow Creek Cleanup to restoration efforts in the Butte area. I strongly support using these funds for that purpose.

In closing, while my letters are sometimes harsh, I only write the letters so that the future taxpayers of this State, our children, will know that someone disagreed with the current course of action and did try to change the system in a positive way!

Sincerely,

Fritz Daily

Fritz Daily
1901 Roosevelt Ave.
Butte, MT 59701



September 21, 2009

Dear Governor Schweitzer,

I have an idea and a solution that I would like to propose to you for allocating the 55 to 65 million dollars remaining from the Silver Bow Creek cleanup.

As you know, the \$270 million Natural Resource Damage Settlement negotiated between ARCO and the State of Montana included an \$80 million buyout by ARCO granting the State of Montana the ability to clean Silver Bow Creek from Interstate 90 west of Butte to the Warm Springs Ponds. Under the direction of Joel Chavez and under your guidance as Governor, a successful cleanup of that portion of Silver Bow Creek will soon be accomplished.

The buyout by ARCO did not include the cleanup of Butte's portion of Silver Bow Creek from the Concentrator in Butte to Interstate 90. It also did not provide for removal of the Parrott Tailings located directly in the path of the headwaters of Silver Bow Creek in the Butte Civic Center area. It also did not deal with a responsible cleanup of the Butte Hill and repair of Butte's storm sewer system. Contaminated water flowing from the Butte Hill has heavily damaged the storm sewer system. The contaminated water flows directly into the system and eventually to Silver Bow Creek.

Even though I strongly believe that ARCO is responsible for the cleanup of these areas, the Environmental Protection Agency for whatever reason has refused to mandate the cleanup by ARCO as required under Superfund Law. Because of this refusal, **I propose using of the remaining funds from the cleanup of Silver Bow Creek to accomplish these goals. I believe there would be remaining funds left over to accomplish other proposals.**

I also strongly believe that the State of Montana and/or the Butte Silver Bow Local Government should still take legal action against the Environmental Protection Agency and demand the cleanups and actions I have outlined. To have responsible cleanup of Butte, Silver Bow Creek and the Clark Fork River basin these actions are necessary!

In the spring of 2008, you held a press conference at the Butte Civic Center where you outlined the \$28.5 million dollar Butte Priority Soils Natural Resource Damage Settlement as a breakthrough agreement. **You praised the parties for reaching an agreement that would allow the residents of Butte Silver Bow, and not the agencies, the opportunity to determine how these monies were to be allocated.** I have praised you in numerous letters and emails for making such a responsible decision and strongly encouraged other governors and attorney generals before you to do the same.

I recently learned the Natural Resource Damage folks are proposing that 20 plus million dollars of this money be spent to remove the Parrott Tailings. That will only leave \$8 million to restore Butte's

12B

portion of Silver Bow Creek and the entire Butte Hill. The problem with using this money on restoration projects by local folks as you proposed is the fact that EPA has not required responsible cleanup of these areas. Before responsible restoration can be accomplished in this area, considerable reclamation funds must be allocated to responsibly clean these areas

Governor Schweitzer, there will never be a responsible cleanup of the Clark Fork River and Silver Bow Creek until Butte's portion of Silver Bow Creek is responsibly cleaned. The Parrott Tailing and the contaminated tailing in and around Butte's Silver Bow Creek are removed, and Butte's Storm Sewer System is repaired!

I understand the folks in Missoula would like to use this money for restoration projects in their area. I would point out that the \$80 million settlement was to clean Silver Bow Creek. No matter what anyone claims, the headwaters of Silver Bow Creek start in the Concentrator area in Butte!

12B

I would also point out that many of the contaminated tailings that were removed from the Mill Town Dam come directly from these areas. Unless the source of the pollution, Silver Bow Creek and the Parrott Tailings, are adequately cleaned and reclaimed, Silver Bow Creek and the Clark Fork River will continue to be polluted as has happened for the past 100 years. I have no doubt the cleaned Silver Bow Creek and the Mill Town Dam area are already being re-contaminated because of recent storms in the Butte area. What a tragedy for the children and future taxpayers of this great State!

I along with other Butte residents would gladly visit with you concerning this request and I anxiously await your response.

Sincerely,

Fritz Daily

Cc: Interested Butte residents and the Butte Press

September 19, 2011



P.O. Box 224
Deer Lodge, MT 59722

Trustee Restoration Council
Natural Resource Damage Program
P. O. Box 201425
1301 East Lockett Ave.
Helena, MT 59620

RE: Public Comment on NRDP Long Range Guidance Plan

Trustee Restoration Council:

Thank you for this opportunity to comment on the Natural Resource Damage Program's (NRDP) Long Range Restoration Priorities and Fund Allocation Guidance Plan. Development of a plan for funding restoration projects is crucial to a successful return of the Upper Clark Fork River Basin to prominence. The NRDP has the potential to greatly enhance the environmental quality and the economic prosperity of this region. We have always strongly supported a plan that addresses the priorities for funding restoration projects through the use of NRDP funds. We appreciate the time and effort that has been dedicated to this endeavor by NRDP staff, the NRDP Advisory Council (AC), the NRDP Trustee Restoration Council (TRC) and the Governor of the state of Montana.

13A

We believe the Long Range Plan is, overall, a solid document that is a step in the right direction in terms of providing a framework for more specific documents that will follow in guiding funding decisions. Most of the changes to this plan that the Governor has suggested are strong and reasonable.

We applaud the Governor in his call for efficiency in promoting the restoration economy in the Upper Clark Fork River Basin. We support a program for funding restoration projects in 2012. We also agree with aggressive timelines for providing the public documents that will serve as the framework for restoration. The Long Range Plan is of crucial importance and its efficient and timely development is paramount. We hope that any restoration project program be open to a public process and subject to public comment. We also hope that projects be accepted from the public rather than just internally driven. Getting work done on the ground is important. So a timely and efficient means for doing so is also important. However, these are still public funds so it is of utmost importance that projects are considered from public sources.

13B

We, also approve of a reserve fund being set aside to address the future. A decision of 15% reserved funds is prudent and looks to the future of restoration needs within the basin.

13C

While we agree with such changes to the Long Range Plan we feel that the boundary for funding projects with leftover funds from the Silver Bow Creek cleanup should not be set at Lost Creek. There is a great deal of mining contamination that remains on the Clark Fork River from Warm Springs to Garrison. Funding projects only upstream of Lost Creek does not take into consideration this contamination and the great potential that remains in improving the main stem of the Clark Fork River. The AC spent a good deal of time and effort in setting the Garrison boundary for funding. Bill Rossbach, AC Chair, made a point to inform the TRC that it was a work of "unanimous consensus" in developing the plan that set the border at Garrison. We feel it is important to move the boundary back to Garrison.

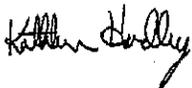
13D

The Advisory Council's Long Range Plan specified that any recreational projects should be funded only if such projects offer natural resource restoration benefits. We agree with the Advisory Council in that recreational projects should also offer restoration benefits.

13E

We appreciate the time and effort that has gone into the NRDP Long Range Plan. Thank you for this opportunity to provide comments.

Sincerely,



Kathy Hadley
CFRTAC Board President

Coleman, Kathleen

From: ROSE NYMAN <rose.nyman1@gmail.com>
Sent: Tuesday, October 11, 2011 1:27 PM
To: Natural Resource Damage Program
Subject: Pubic Comment Letter

Dear Members of the Trustee Restoration Council and the Citizens Advisory Council,

I wish to offer my personal support of the Long Range Restoration Priorities and Funding Allocation Guidance Plan. I also support Governor Schweitzer's amendment. I believe a great deal of research, thought and time has gone into this proposal. 14

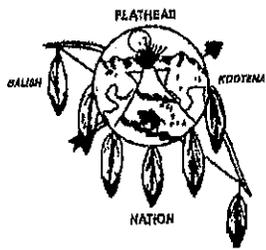
I would like any unused funds from the Silver Bow Creek Restoration project to stay in the upper basin. 14B

I sincerely appreciate your continued support of projects within Anaconda-Deer Lodge County. Due to the damage to our natural resources, it was greatly needed. 14C

Thank you for the numerous hours you have dedicated to the Upper Clark Fork River Basin. It demonstrated a high level of dedication to our beautiful State.

I appreciate the opportunity to comment.

Rose M. Nyman
520 Cedar Street
Anaconda, T 59711



A Confederation of the Salish,
Pend d' Oreilles
and Kootenai Tribes

THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

P.O. BOX 278
Pablo, Montana 59855
(406) 275-2700
FAX (406) 275-2806
www.cskt.org



A People of Vision

TRIBAL COUNCIL MEMBERS:

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James Steele Jr.

October 11, 2011

Natural Resource Damage Program
P.O. Box 201425
Helena, MT 59620-1425

Sent by mail and email (nrdp@mt.gov)

Trustee Restoration Council Members

The Confederated Salish and Kootenai Tribes (CSKT) submit these comments on the Upper Clark Fork River Basin Trustee Restoration Council Long Range Restoration Priorities and Fund Allocation Guidance Plan.

The CSKT have a long-standing interest in the restoration of the injured natural resources of the Upper Clark Fork River Basin (UCFRB). Since time immemorial the Tribes have utilized the fish and wildlife of the UCFRB. Upon signing the Hellgate Treaty on July 16, 1855 the Tribes reserved, in perpetuity, off-Reservation rights to take fish at "all usual and accustomed" places and to hunt, gather food and materials, and pasture their livestock upon "open and unclaimed land" lying outside the Reservation boundaries. The courts have interpreted the right to take fish as meaning more than simply the ability to dip a net into the water and have it come out empty.

The CSKT intervened in *Montana v. ARCO, No. CV-83-317-H-PG* and the CSKT's fundamental position remains as it always has been: That the Upper Clark Fork River ecosystem is a unitary resource. Accordingly, we want the river preserved where it is now healthy and restored where it is now damaged.

The CSKT actively participated in the development of the Advisory Council's Long Range Plan. The CSKT continues to recognize and support the Advisory Council's process and results - both based on the reasonableness of content and the fact that it was a public process, created in front of the public and vetted during each phase of the process. Our perception is that a very clear majority of public comment also supports the Long Range Plan. The CSKT support the December 2010 Long Range Plan as it was then approved.

As a voting member of the Advisory Council we incorporate by reference the October 10, 2011 letter from Advisory Council Chair, Bill Rossbach and concur with those comments.

Restoration Fund expenditures directly and indirectly impact CSKT Treaty rights. The SSTOU Consent Decree is quite clear in its requirement that unexpended SSTOU funds are to be transferred into the Upper Clark Fork River Basin Restoration Fund - the purpose of which is to restore, rehabilitate, replace or acquire the equivalent of injured natural resources (See Consent Decree paragraph II, 15, e). Accordingly, the Tribes expect that the State of Montana will continue to faithfully perform the requirements of the Consent Decree and transfer all unexpended SSTOU funds into Upper Clark Fork River Basin Restoration Fund. Thereafter, the Tribes strongly support allocating Clark Fork restoration funds proportionate to the restoration claims in Montana v. ARCO. The geographic areas identified in the Advisory Council's Long Range Plan is a reasonable and balanced approach to allocating SSTOU remainders. We can find no scientific or legal justification for allocating SSTOU remainders solely to "at and above Lost Creek" while excluding important priority areas such as the Upper Clark Fork River where remediation and restoration is just beginning.

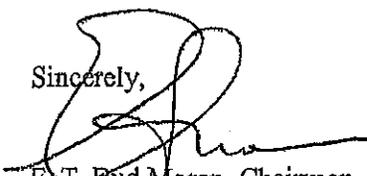
15C

The CSKT continues to see a need for a comprehensive plan for restoration of injured aquatic and terrestrial resources. Unfortunately the revised Long Range Plan merely requires the NRDP to develop a planning process. The aquatic and terrestrial prioritization plans co-authored by the Natural Resources Damages Program and the Montana Fish, Wildlife and Parks provide a foundation for restoration planning. We have also reviewed the Aquatic Restoration Strategy developed by Clark Fork Coalition and think it has merit. Absent a comprehensive restoration plan we are concerned that the State cannot meet its trustee duty for the injured natural resources of the Clark Fork River because it cannot ensure that expenditures are the most efficient and effective use of the Clark Fork Restoration Fund.

15D

The State of Montana and CSKT have worked long and hard on these unitary resources and our hope is that we can continue to work together to enforce the Consent Decrees to best restore natural resources injured by a century of mining in the Upper Clark Fork River Basin.

Sincerely,



E. T. Bud Moran, Chairman
Tribal Council

**PROJECT GREEN OF MONTANA, INC.
65 EAST BROADWAY
BUTTE, MT 59701**

October 11, 2011

Vivian Hammill, Chair, Trustee Restoration Council
Natural Resource Damage Program
P.O. Box 201425
Helena, MT 59620-1425

Re: Project Green Comments on the revised *Long Range Restoration Priorities and Fund Allocation Draft Guidance Plan* for the Upper Clark Fork River Basin Plan (08-29-11 draft).

Dear Ms. Hammill:

The purpose of this letter is to provide, as part of the public comment process, the comments of Project Green of Montana, Inc. ("Project Green") on the NRD Trustee Restoration Council's (TRC) *Long Range Restoration Priorities and Fund Allocation Guidance Plan* (TRC Plan), which incorporates the Governor's Office's suggested changes to the Upper Clark Fork River Basin Advisory Council's December 15, 2010 Long Range Guidance Plan proposal (AC Plan).

By way of background, Project Green began in the mid-1990's as a Butte citizens' grassroots community organization and evolved to a Montana non-profit 501(c)(3) corporation that promotes innovative remedial and restoration projects. Project Green's Articles of Incorporation state its primary purposes as:

To encourage innovation in Superfund remediation so that future land use of Superfund cleanup sites becomes a vital component of community development while demanding safe long-term remediation protective of human health and the environment. To create tangible community assets for the area while encouraging sound and cost-effective reclamation. To encourage technology development and deployment in Superfund remediation projects. To encourage long-term, cost-effective remedies that meet the economic development and recreational needs of the affected communities while continuing to meet the human health and environmental protection objectives of Superfund. To promote community education to encourage affected citizens to participate in the decision-making process relating to these sites in order to create economic, social, cultural, and recreational opportunities and support open space and other beneficial uses. And to operate to the ultimate benefit of the citizens of the affected areas, the State of Montana, and the United States...

Project Green Comments
Page 2 of 2

Given these purposes, Project Green has had an active interest in the Natural Resources Damage Program (NRDP) since the program's inception, and in Superfund activities before then. For example, Project Green has been involved with the Silver Bow Creek clean-up and the associated Greenway project (Greenway Project), since it was proposed as the end land use for Silver Bow Creek post-remediation, through the designation of such end land use in the SSTOU Record of Decision, continuing to the present time and the ongoing remediation and restoration work.

With that background, Project Green appreciates the opportunity to offer comments on the TRC Plan, as follows.

Project Green generally supports the TRC Plan with the Governor's Office's suggested changes. While Project Green ideally would like to see changes consistent with all of Project Green's original comments to the original NRDP "Roadmap," Project Green recognizes as a practical matter that the process is too far down the road for that to occur, and therefore one must focus on the TRC Plan as proposed. The TRC Plan reflects many worthy comments on the AC Plan, including Project Green's comments, and Project Green appreciates the efforts of the Governor's Office to take into consideration such comments. Project Green particularly supports the change to provide full funding for the Silver Bow Creek Greenway, and commends the Governor's Office for recognizing the need to fully fund the Greenway. Project Green also commends the Governor's Office for the other changes in the body of the TRC Plan, as they reflect sound revisions that are consistent with appropriate use of NRD funding.

16A

While Project Green supports the changes in the body of the TRC Plan, Project Green would like to see the TRC come up with a way to put the Advisory Council's recitals back in the plan somehow, as those recitals are very important to understanding the principles that underpin the TRC Plan. The recitals in many ways were the best part of the AC Plan, and Project Green believes it would be extremely beneficial to have the recitals in the final version of the plan so all stakeholders will understand the driving principles behind the plan. Many documents have recitals in them, and Project Green did not fully understand the reasons given by the Governor's Office for deleting them in their entirety.

16B

In conclusion, Project Green supports the changes in the body of the TRC Plan, and would only ask that the TRC seriously consider putting the excellent recitals drafted by the Advisory Council back in the plan. Project Green again commends the Governor's Office for their efforts to develop and craft the TRC Plan, and would encourage its adoption together with such recitals. Thank you for the opportunity to comment and we hope our input is helpful.

Sincerely,

Brian Holland, president / N.T.

Project Green of Montana, Inc.

cc: Project Green Board



COALITION P.O. Box 7539, Missoula, MT 59807 ph. 406.542.0539

October 11, 2011

Ms. Vivian Hammill, Chair
And members of the Upper Clark Fork River Basin Trustee Restoration Council
c/o NRDP, 1301 E. Lockey
PO Box 201425
Helena, MT 59620

Re: Upper Clark Fork River Basin Trustee Restoration Council Long Range Restoration Priorities and Fund Allocation Guidance Plan

Dear Ms. Hammill,

Thank you for the opportunity to comment on the Restoration Priorities and Fund Allocation Guidance Plan. The Clark Fork Coalition strongly supported the consensus plan developed by the Citizen's Advisory Council (AC), and we are encouraged now to see that the planning process is moving forward. We support many of the proposed changes to the plan, including continued funding for CFWEP and full funding for the Silver Bow Creek master plan. We also strongly support the directive to NRDP staff to develop a process for a specific restoration plan in the two months following approval of this plan. But there are several areas where we ask you to reinstate some of the original language in the Advisory Council's plan *before finalizing the Restoration Priorities and Fund Allocation Guidance Plan*. These may not seem like major changes, but it's worth noting that the AC's language was carefully considered and debated, and that there is good reason why this language achieved consensus among all the members.

-
- *Funding Recreational Projects.* In stating that recreational projects should "offer natural resource restoration benefits, not just recreational benefits," members of the Advisory Council recognized two things: that Superfund cleanup in the upper basin is far from complete (in fact, Butte does not yet have a Consent Decree), and that there is still significant uncertainty over what can ultimately be accomplished under remedy. Although all cleanup work *should* ideally be accomplished through Superfund, the AC recognized that there are borderline situations where EPA would opt to leave contaminated material in place. That's why NRD funds were needed and used for additional sediment removal from Silver Bow Creek and from the Milltown reservoir. It's very likely that there will be similar needs in Butte and Anaconda. Given this level of uncertainty, the AC felt it was prudent over the next 20 years to prioritize NRDP spending on restoration projects, and to limit spending on projects that are purely recreational. The Clark Fork Coalition agrees with this approach, and we urge you to reinstate the original Advisory Council language in this section. If the TRC believes this language is problematic with respect to future interpretation, we suggest adding a sentence to convey the AC's intent with respect to restoration.

17A

17B

- *SSTOU Remediation Fund Remainders.* The Advisory Council's plan for allocation of these funds drew on the same logic as described above for recreational projects, namely that Superfund cleanup is ongoing and uncertain. In light of that, the AC's plan would have accomplished essentially the same thing as the proposed language, but without explicitly excluding priority injured areas that were part of the original NRD claims. The AC language was carefully written such that all leftover SSTOU funds would most likely be spent upstream in the Butte and Anaconda areas because it requires that all other earmarked NRD funds be exhausted first. Apart from the Butte and Anaconda areas, the only other location these funds would have been spent under the AC language is in Reach A of the upper Clark Fork River. Although that cleanup project hasn't yet begun, DEQ staff have expressed confidence in accomplishing that work with available funds. Yet, in the unlikely event that some unknown situation were encountered in the upper Clark Fork, and if additional funds were indeed needed, the upper CFR should not be excluded from these funds. For that reason, we think the AC's language is preferable. Apart from that, the Clark Fork Coalition fully supports the remaining language that these funds be held in reserve for "additional, unfunded, restoration of aquatic and terrestrial resources."

17C

The Coalition looks forward to the next step in this process: the development of a more specific restoration plan for aquatic and terrestrial resources. We support the general process set forth in the new document, and recommend limiting expenditures on major aquatic and terrestrial projects to the interest earned on the fund until a plan is completed. We'd also like to see broad public involvement among interested constituencies in development of a restoration plan for these resources. Thanks again for considering our comments.

17D

Best regards,

Christine Brick

Christine Brick
Science Director
Clark Fork Coalition
P.O. Box 7539
Missoula, MT 59807

406-542-0539 ext 202
chris@clarkfork.org



P.O. Box 8953 • Missoula, Montana 59807 • (406) 549-0755 • Fax (406) 728-2841
Email: office@fvlt.org • www.fvlt.org

October 11, 2011

Natural Resource Damage Program
Montana Department of Justice
1301 East Lockey
P.O. Box 201425
Helena, MT 59620-1425

RE: Public Comment on Trustee Restoration Council Long Range Restoration Priorities and Fund Allocation Guidance Plan.

To Whom It May Concern,

On behalf of the Five Valleys Land Trust, I write to provide our public comments on the Upper Clark Fork River Basin Trustee Restoration Council Long Range Restoration Priorities and Fund Allocation Guidance Plan (hereinafter "Guidance Plan").

Over the course of the past several years, Five Valleys has closely followed the Advisory Council's development of the Guidance Plan. The Advisory Council was thorough and thoughtful in its approach, and as a result, the Advisory Council developed a Guidance Plan that gained support up and down the Clark Fork Basin. Five Valleys believes that the Advisory Council's Guidance Plan has a strong likelihood of unifying the basin and spurring the development of cooperative efforts to protect and restore the entire spectrum of those precious natural resources that are so fundamental to the quality of life we enjoy in the State of Montana.

The Guidance Plan also provides the necessary framework for funding allocation that will enable the Natural Resource Damage Program (NRDP) to confidently move forward with the creation of a more specific Restoration Plan for developing, evaluating, and making recommendations for future projects to be funded through NRDP. A Restoration Plan will ensure that all stakeholders are collaborating strategically so that the most important natural resource restoration is accomplished and that the work is being done as cost effectively as possible. Among those stakeholders, Five Valleys is aware of a significant number of private landowners throughout the basin who may be interested in collaboration toward these strategic goals. As such, Five Valleys asks that we be included in upcoming strategic discussions related to the restoration planning process as we have much information and expertise to share.



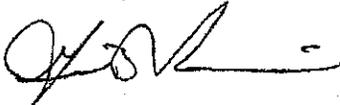
Board of Directors: Mary Babson • Lucy Beighle • Sean Benton • Jim Brown • John Corwin • Jim Cusker • Mary Lynn Eiseman
Julie Gardner • Kathy McAllister • Jeffrey Roth • Amber Sherrill • Don Sokoloski
John Talbot • Chuck Tribe • Jim Valeo • Pam Volkmann

Five Valleys is aware that the planning process can be time consuming, yet we encourage NRDP to take the necessary time in order to complete a comprehensive Restoration Plan. Five Valleys hopes that in the interim an annual grants cycle is maintained, as is recommended in the Trustee Restoration Council's most recent changes to the Guidance Plan. However, such a grants program should continue to have an expenditure limit that does not exceed the interest accrued above the account principal. Five Valleys believes it is not appropriate to spend the principal of the Restoration Fund until a Restoration Plan is in place.

18C

Five Valleys is grateful for the time and energy put into the Guidance Plan by the Trustee Council, Advisory Council, NRDP staff, and other community members. With this effort, the basin can move forward toward meeting its restoration goals and the people, wildlife, and rivers of Montana will enjoy the benefits for generations to come.

Sincerely,



Grant B. Kier
Executive Director

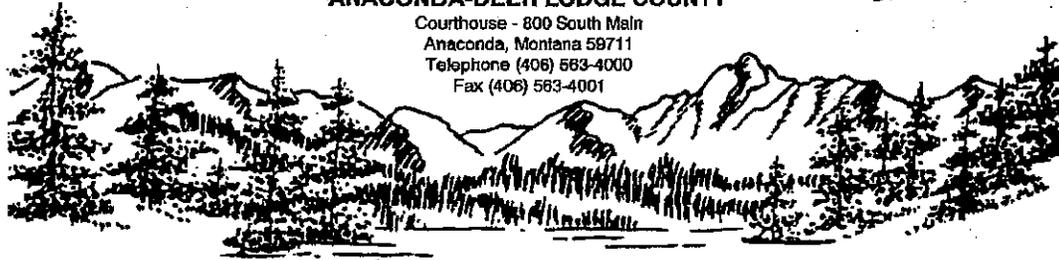
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OCT 11 2011

NATURAL RESOURCE
DAMAGE PROGRAM

ANACONDA-DEER LODGE COUNTY

Courthouse - 800 South Main
Anaconda, Montana 59711
Telephone (406) 583-4000
Fax (406) 583-4001



October 6, 2011

Upper Clark Fork River Basin Trustee Council
PO Box 201425
Helena MT 59620

Dear members of the Upper Clark Fork River Basin Trustee Council:

We the undersigned Board of County Commissioners from Anaconda-Deer Lodge County unanimously support the Long Range Restoration Priorities and Funding Allocation Guidance Plan set forth by the Citizens Advisory Council and the amended suggestions by Governor Brian Schweitzer.

19A

We feel the proposal is a good plan and takes into consideration the upper basin counties where significant natural resource damage has occurred. We like the set-aside for Priority Groundwater for Butte and Anaconda that allows us to self-determine water distribution projects without having to go back to the Council annually with proposals and wait approval or suggestions. This Priority Ground Water fund has served our community very well in the past and will continue to help us deal with problems associated with contaminated ground into the future.

19B

We believe the distribution of funds into Priority Aquatic, Priority Terrestrial and a combined reserve fund is fair. We also agree that any remaining funds from the Silver Bow Creek Remediation project should be spent in the upper basin at and above Lost Creek. We look forward to working with you to identify projects within the upper basin to address natural resource issues where damage has occurred within Deer Lodge County in Lost Creek, Warm Spring Creek, Willow Creek, Mill Creek and other drainages.

19C

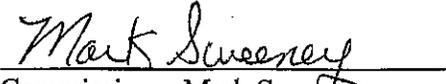
Thank you for the opportunity to comment on this plan and moving this project forward.

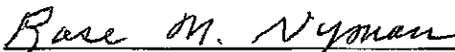
Sincerely,

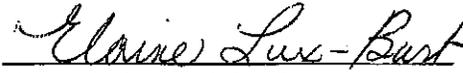
Anaconda Deer Lodge County Board of Commission


Commission Chair Robert Pierce


Commissioner Neal Warner


Commissioner Mark Sweedley


Vice Chair Rose M. Nyman


Commissioner Elaine Lux-Burt

The following names commented via form letter.

| Name | Address | City, State, Zip Code |
|--------------------------|--------------------------|------------------------------|
| 20 Joyce O'Connor | 3520 Whiteway Blvd | Butte, MT 59701 |
| 21 Dan McGrath | no address listed | |
| 22 Ron Ueland | 122181 W. Browns Gulch | Butte, MT 59701 |
| 23 Jeffrey Ruffuer | 3025 Phillips St. | Butte, MT 59701 |
| 24 Doreen Ford | 21 Holly Lane | Butte, MT 59701 |
| 25 James Harrington | 100 E. Broadway St. #805 | Butte, MT 59701 |
| 26 Northey Tretheway | 3448 Wharton | Butte, MT 59701 |
| 27 Gleason | 2408 Elm | Butte, MT 59701 |
| 28 Doug Peoples | 5 E. Webster | Butte, MT 59701 |
| 29 John LeFever | 2754 Tanney Rd. | Butte, MT 59701 |
| 30 Marth Cooney-Simonich | 208 Blacktail Canyon Rd. | Butte, MT 59701 |
| 31 R. Burkhart | 315 Stewart | Anaconda, MT 59711 |
| 32 Jim McGrath | no address listed | |
| 33 illegible | 87 Homestead Dr. | Anaconda, MT 59711 |
| 34 Jo Ann Lewis | no address listed | |
| 35 John Lyons | no address listed | |
| 36 William Ferko | 4815 S. Wyoming | Butte, MT 59701 |
| 37 Geri Mihellick | no address listed | |
| 38 Neal Egan | 900 W. Silver | Butte, MT 59701 |
| 39 Don Peoples Jr. | 4108 Trenton | Butte, MT 59701 |
| 40 Julie Nadeau | 3205 Edwards | Butte, MT 59701 |
| 41 John Cote | | Butte, MT 59701 |
| 42 Dan Steele | no address listed | |
| 43 Brit Keith | no address listed | |
| 44 Gaylene McHugh | 1933 Aberdeen | Butte, MT 59701 |
| 45 Julie Jaksha | 3251 S. Montana | Butte, MT 59701 |
| 46 Mary Kay Maloney | 1260 Farrell | Butte, MT 59701 |
| 47 Mary Joan Bennie | 115 Rocky Mountain Lane | Butte, MT 59701 |
| 48 Edie Moses | 117 Fleecer Drive | Butte, MT 59701 |
| 49 Betty Piskolich | no address listed | |
| 50 Penny McLaughlin | 2620 Silver Bow Blvd | Butte, MT 59701 |
| 51 Phillip Curtis | 60 E. Granite | Butte, MT 59701 |
| 52 illegible | no address listed | |
| 53 Amy Hartz | 8 W. Park St., Ste. 605 | Butte, MT 59701 |
| 54 Joshua Barth | 1959 Roberts | Butte, MT 59701 |
| 55 Carl Popovich | 1819 Garrison Ave | Butte, MT 59701 |
| 56 John Metz | no address listed | |
| 57 illegible | 256 Meadow View Drive | Butte, MT 59701 |
| 58 Larry Jones | 116 Cedar Lake Court | Butte, MT 59701 |
| 59 John Metz | no address listed | |
| 60 Leslie Houchin | 708 N. Wyoming | Butte, MT 59701 |
| 61 Barbara Russell | 245 Meadow View Drive | Butte, MT 59701 |
| 62 Marilyn Malyevac | 499 Browns Gulch Rd | Butte, MT 59701 |
| 63 Lynnette Hogart | 2230 Massachusettes | Butte, MT 59701 |

October 4, 2011

Natural Resource Damage Program (NRDP)
P.O. Box 201425
1301 East Lockey Avenue, 2nd Floor
Helena, MT 59601

Dear NRDP Staff:

I am writing to support the Trustees Council "Long Range Restoration Preservation and Fund Allocation Guidance Plan" ("Long Range Plan"). It is my understanding that this plan incorporates the Trustee Restoration Council's suggested change to the Upper Clark Fork River Basin Advisory Council's December 15, 2010 Long Range Guidance Plan proposal.

The funds to be allocated by this Long Range Plan are what remain of the money in the UCFRB Restoration Fund. The plan sets forth a proposal basis for allocating the remaining money among three natural resource groups, namely aquatic, terrestrial and groundwater resources and provides for a process for developing restoration plans for each of these resource groups.

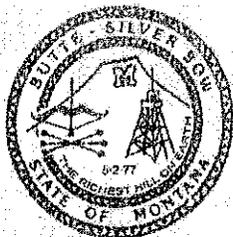
Additionally, I am in support of the Governor and Trustees Council's recommended changes at the August 29, 2011, meeting regarding the "Aquatic and Terrestrial Restoration Funding Process", and the "SSTOU Remediation Fund Remainders".

Sincerely,

A handwritten signature in cursive script that reads "Helen O'Connor-Pipe".

Butte, MT 59701

Cc: Governors Office
Capitol Station
Helena, MT 59620



BUTTE-SILVER BOW

Office of Council of Commissioners

Courthouse

Butte, Montana 59701

October 5, 2011

Vivian Hammil, Chair
Natural Resource Damage Program Trustee Council
Governor's Office - Room 204
State Capitol - P.O. Box 200801
Helena, MT 59620-0801

Re: Butte-Silver Bow Comments
Upper Clark Fork River Basin Long Range Restoration Priorities and
Fund Allocation Guidance Plan (August 29, 2011 draft)

Dear Ms. Hammil:

Thank you for the opportunity to comment on the latest version of the Draft *NRD Guidance Plan (Plan)*, as released on August 29, 2011. We very much appreciate the efforts of the Governor's Office to consider and prepare revisions to the *Plan* (presumably in response to public input), and now the Trustee Council's outreach for public comment on the revised edition.

Pending the acceptance of the revisions, Butte-Silver Bow can fully support *the Plan* as the long-term blueprint to guide restoration priorities of the Upper Clark Fork River Basin. As we have expressed many times in the past 12 years, we believe the headwaters, including the entire Silver Bow Creek watershed, is where the majority of the natural resource damages occurred, and given the location and severity of those damages, the natural resources in the headwaters area should be the focal point of restoration investments. This latest version of *the Plan* appears to fully recognize this fundamental principle and prioritizes future investments accordingly.

More specifically, we support these changes and clarifications in the revised plan:

- 1) The revision to increase the "*encumbered and dedicated*" allocation to complete the restoration of Silver Bow Creek up to \$8 million and implement the long-planned Silver Bow Creek Greenway project, including both the ecological components in the stream/floodplain designed to complement the remedial actions and the recreational components designed as institutional controls to ensure public access/enjoyment and successful long-term O&M of the remedy. Further, we support the revision to initially provide the needed funds through the UCRRB RF to ensure timely implementation of the project, and then when available, reimburse funds from the Silver Bow Creek Reserve Fund.

- 2) The revision to restrict the allocation of any "SSTOU Remediation Fund Reminders" entirely within the Silver Bow Creek and Warm Springs Creek watersheds. Further, we support the revision to recognize Lost Creek as the point in the Basin above which priorities can be set for restoration investments. 64C
-
- 3) The revisions on funding education projects to a biennial basis and the more secure funding of the Clark Fork Watershed Education Program. 64D
-
- 4) The revisions that clarify the process for groundwater resource projects and the reliance on the local government master plans for drinking water system improvements. 64E
-
- 5) The revisions that clarify the use of restoration funds for recreational projects. While we are still concerned about possible limitations, it appears the revised language is more flexible in terms of considering beneficial recreational replacement projects. As we have previously stated, Butte-Silver Bow certainly understands and supports the priority to allocate funds for projects that directly restore or replace damaged natural resources. However, Butte-Silver Bow also recognizes that the replacement of lost recreational opportunities due to the impacts of mining is also a major objective of the NRD lawsuit, and affected communities should be able to propose and implement worthy projects toward that objective. 64F
-
- 6) As for the Time Frame to get moving on implementation of projects, we appreciate the revision that calls for "*early restoration proposals during calendar year 2012.*" Butte-Silver Bow is anxious to get started on several groundwater restoration and replacement projects, advance the Silver Bow Creek Greenway project, implement restoration work on the Butte Hill in sync with the ongoing remedial work, and get going on a comprehensive initiative that would allow for an integrated solution to water resources protection and restoration in the upper reaches of Silver Bow Creek. We assume funding will be available to move forward on a number of these projects in the 2012 construction season. 64G
-

In closing, we are very thankful for the proposed revisions to *the Plan* and commend the Governor and Trustee Council for your efforts to develop and craft a consensus-based Plan. Several of us as Commissioners and many of our citizens in Butte have been involved with the NRD program for the past two decades. We appreciate the collaborative process to refine this *Plan* that best serves the interests of all Basin stakeholders.

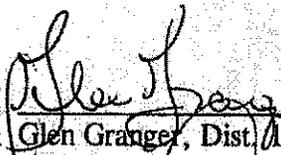
Sincerely,

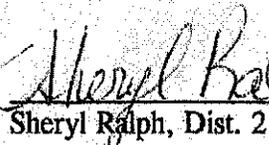


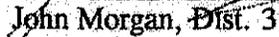
Dave Palmer, Chairman (District 12)
Butte-Silver Bow Council of Commissioners

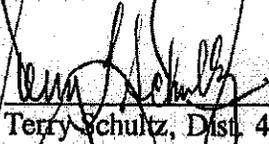


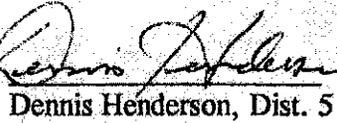
Paul D. Babb
Chief Executive


Glen Granger, Dist. 1


Sheryl Ralph, Dist. 2


John Morgan, Dist. 3


Terry Schultz, Dist. 4

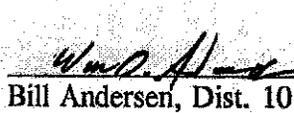

Dennis Henderson, Dist. 5

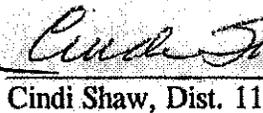

Wally Frasz, Dist. 6


Bud Walker, Dist. 7


Ristene Hall, Dist. 8


Dan Foley, Dist. 9


Bill Andersen, Dist. 10


Cindi Shaw, Dist. 11

Cc: Butte-Silver Bow Technical Review Committee/Environmental
Eileen Joyce, Butte-Silver Bow County Attorney
Chair, Butte Restoration Alliance (BRA), for distribution to members
Chair, Greenway Authority Board (GSD), for distribution to members
Chair, Butte NRD Council (BNRC), for distribution to members
Chair, Butte Citizens Technical Environmental Committee (CTEC), for distribution to members
Chair, Project Green, for distribution to members

Note from NRDP: Via a separate comment letter (#15), the Confederated Salish and Kootenai Tribes incorporate this comment letter by reference and indicate concurrence with it.

UPPER CLARK FORK RIVER BASIN REMEDICATION AND RESTORATION ADVISORY COUNCIL

Bill Rossbach, Chair
Missoula

Maureen Connor
Phillipsburg

Kay Eccleston
Anaconda

Roy O'Connor
Missoula

Jim Kambich
Butte

Jon Krutar
Ovando

Mike McLean
Anaconda

Mick Ringsak
Butte

Richard Opper, Director
Dept. of Environmental
Quality

Joe Maurier, Director
Dept. of Fish, Wildlife and
Parks

Mary Sexton, Director Dept.
of Natural Resources and
Conservation

Bud Moran, Chairman
Confederated Salish &
Kootenai Tribes

Laura Rotegard
U.S. Dept of Interior

October 11, 2011

Vivian Hammill
Chief of Staff
Governor's Office
State Capitol
Helena, Montana 59601

Re: Comments on Revisions to Guidance Plan

On behalf of the Governor's appointed citizen members of the Upper Clark Fork River Basin Advisory Council, I would like to take this opportunity to provide some comments on the proposed revisions to the Guidance Plan.

First, we appreciate the work done in turning the proposal and resolution into a true plan that can be formally adopted by the Trustee. We also concur generally with the wording and editorial changes proposed.

Second, we are gratified that the proposal follows the basic structure of our plan and the allocation percentages among groundwater, aquatic, and terrestrial resource restorations.

Third, as the citizen members of the council charged with the responsibility for advising the Trustee on what we believe is the most effective use of limited funds to provide the greatest benefit to the entire basin, from Butte to Milltown, we feel it is important to reiterate that the plan we proposed was the result of hundreds and hundreds of hours collectively where we considered many hours of public input to carefully craft a balanced compromise that we believed would maximize the benefit to the entire basin, while keeping in mind that the most substantial injuries to the people and resources occurred in the upper portions of the basin.

We emphasize this again because we are concerned that some of the proposed changes may erode that balanced compromise and reduce the global benefit to the entirety of the affected resources. What follows then are some details with which we as the citizen

members of the council have concerns.

A.) In the section entitled: "Aquatic and terrestrial restoration funding process," we do not understand why reference to the Milltown dam site was removed as a specified priority area. 65A

B.) In the next paragraph of that same section referring to the Greenway, we have supported strongly and will continue to support full restoration of the watershed encompassed by the Greenway Project. As we understand the proposed changes here, the Greenway allocation will be expressly increased with funding to come from the main UCFRB Restoration Fund; however, those specific funds used from the main restoration fund will be paid back to that fund from the Silver Bow Creek Reserve Fund, if and when it becomes available. If our understanding is correct, we concur. 65B

C.) Again, in the same section on aquatic and terrestrial restoration, we are also concerned about removing the limitations on funding purely recreational projects that we carefully considered and proposed. We have limited funds, and we believe that using the funds for carefully developed aquatic and restoration projects will provide substantial secondary recreational benefits. In our fiduciary capacity of advising the Trustee on the wisest uses of the limited funds, we believe that to achieve maximum restoration of the injured resources, we had to make the difficult decision, after much public input, to limit purely recreational projects. We urge that our original proposal be retained. 65C

D.) In the section regarding educational projects, we do support continued funding of educational projects under CFWEF, but we understood from them that they had a goal of becoming self-sustaining, and we want to promote and encourage that. We concur with the proposed biennial grant cycle, but want to express our concern that future councils carefully evaluate future education funding after 5 years to encourage the goal that CFWEF become self-sustaining and that funds allocated to education do not take away from critical restoration needs. 65D

E.) In the section on SSTOU Remainders (Silver Bow Creek Restoration), with regard to the proposed changes in the geographic area for which remainder funds can be used, we reiterate and emphasize that our proposal was the result of many hours of public debate and consideration and was the result of a balanced compromise. We understand that the most affected resources are at the upper reaches of the basin, but we also know that limited funds are available for restoring the entire basin, and it is impossible to predict where there might be unfunded restoration needs below Lost Creek that would benefit the entire resource. We continue to believe that the geographic boundaries for future use of these funds should not be so limited. 65E

Thank you for giving us the opportunity to comment. We look forward to the Trustee Restoration Council's consideration of these and other comments so that this planning process can be concluded and a final plan be adopted.

Sincerely,



William A. Rossbach

cc. Carolyn Fox

Golden, Michelle

From: Fox, Carolyn A.
Sent: Monday, October 17, 2011 3:08 PM
To: Golden, Michelle
Subject: FW: comments to trustee council on plan revisions

#66

Carol

-----Original Message-----

From: Bill Rossbach [<mailto:bill@rossbachlaw.com>]
Sent: Tuesday, October 11, 2011 1:05 PM
To: Hammill, Vivian; Fox, Carolyn A.
Cc: Mick; Jim Kambich; Maureen Connor
Subject: FW: comments to trustee council on plan revisions

Viv,

I received this message from Mick Ringstad and felt it should be considered part of the record in this.

Bill Rossbach
Rossbach Hart, PC
401 N. Washington, Box 8988
Missoula, MT 59802
406-543-5156

-----Original Message-----

From: Mick [<mailto:eltonringsak@aol.com>]
Sent: Tuesday, October 11, 2011 11:59 AM
To: Bill Rossbach
Cc: Jim Kambich; Maureen Connor
Subject: Re: comments to trustee council on plan revisions

Bill,

I think you've put together an excellent letter to the TC, and reflect the considered opinion of a majority on the AC. I have some concerns about para C, as I know it doesn't reflect the position of the Silver Bow County Commissioners, the Planning Department or the Chief Executive.

If I am to truly represent the Butte Community, I need to let you know that Butte would prefer the language as edited; rather than the original proposal recommended by the AC. As you know, Jim and I voted for the AC recommendation after considerable discussion in the interest of working together as a council and building consensus within the group over the last two years and going forward.

Highest Regards, Mick