

**Final State of Montana's  
Response to Public Comments  
on the**

***May 2010 Draft Final Upper  
Clark Fork River Basin  
Tributary Prioritization Plan***

Jointly prepared by the Montana Natural Resource Damage  
Program and Department of Fish, Wildlife, and Parks

**December, 2011**

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## Section I. Introduction

In May 2010, the Montana Fish, Wildlife & Parks (FWP) and Natural Resource Damage Program (NRDP) jointly produced a draft tributary prioritization plan in the Upper Clark Fork River Basin (UCFRB) that prioritizes areas in the Basin for aquatic habitat protection and enhancement efforts and describes strategies for and examples of such efforts to benefit aquatic resources.<sup>1</sup> After presenting the draft tributary prioritization document to the Advisory Council on May 19, 2010 and the Trustee Restoration Council on May 21, 2010, we initiated a 60-day public comment period on the document from September 30 to November 30, 2010 on this draft plan, as well as companion draft terrestrial resource prioritization document.<sup>2</sup> We held three public meetings on both the draft terrestrial and the tributary prioritization plans in September and October 2010, plus several small group meetings were held on the draft plans by request.

We received a total of 19 comments letters on the draft tributary prioritization plan (indicated hereafter as the “Draft Tributary Plan”). This document provides responses to these comments. Appendix A contains copies of these comment letters, each of which are identified with a reference number (e.g. A-1, A-2, etc). It includes a categorical breakdown of these comment letters under broad categories and identifies the entity or individual submitting the comment letter. The responses below are organized according to this categorical breakdown.

In April 2011, FWP and NRDP jointly prepared and issued draft responses to public comment on the Draft Tributary Plan for consideration of the Advisory Council, Trustee Restoration Council and Governor. This final response document is based on the Governor’s approval of a final aquatic prioritization plan (indicated hereafter as “Final Aquatic Prioritization Plan”) in December 2011.<sup>3</sup>

As detailed in the responses below, the state has made important changes reflected in the Final Aquatic Prioritization Plan that improve the Draft Tributary Plan, including changes involving additional rationale and explanation. We made these changes in an effort to be responsive to the public comments and concerns, including better explaining the Draft Tributary Plan’s connection to the Clark Fork River and Silver Bow Creek, and better providing the connection between this document and the *Draft Resolution by the UCFRB Advisory Council for Adoption of a Long Range Restoration Priorities and Fund Allocation Guidance Plan (December 2010)*. Though changes were made to the Draft Tributary Plan, the methodology and goals that guided the original document remain basically unchanged in the Final Aquatic Prioritization Plan. The most significant changes made involved expanding the scope of the prioritization document to address both mainstem and tributary fishery restoration priorities, as reflected in the revisions to the Background and Purpose Section and the new additions of Section A (Mainstem Priorities) and Section D. (Strategies for Fishery Management.) Other changes to the Draft Tributary Plan included increasing the priority rank of some streams in recognition of native fish populations

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<sup>1</sup> *Prioritization of Tributaries in the Upper Clark Fork River Basin for Fishery Enhancement*, jointly prepared by FWP and NRDP, Draft Final dated May 2010.

<sup>2</sup> *Upper Clark Fork River Basin Terrestrial Wildlife Resource Prioritization*, jointly prepared by the FWP and NRDP, Draft Final dated August 6, 2010.

<sup>3</sup> *Prioritization of Areas in the Upper Clark Fork River Basin for Fishery Enhancement*, jointly prepared by FWP and NRDP, Final dated December 2011.

that are connected to the mainstem fisheries. These changes can be found in Table 2 and on Map 2 and are further explained in Section B (Prioritization of Tributaries). Other changes to Table 2 and Map 2 are a result of including some of the available assessment data on streams near Butte that had previously been assessed but not yet ranked. Finally, some changes also generally served to better recognize the high priority of the mainstems of Clark Fork and Silver Bow Creek and the importance of increased instream flow to fishery restoration, especially in areas of the Basin that are chronically de-watered.

#### Category 1: General Support of the Draft Tributary Plan

Comments: Ten comment letters (A-2, A-3, A-4, A-6, A-10, A-11, A-12, A-13, A-16 and A-17) indicate general support of the Draft Tributary Plan and state that the prioritization is needed and the Draft Tributary Plan is a good starting point and/or Draft Tributary Plan is appropriate. A few of these same letters [from Clark Fork Coalition (A-6), and Missoula County Health Department (A-10)] indicate some additional concerns with various aspects of the Draft Tributary Plan that are addressed later in this response document.

Most of these support letters acknowledge the sound scientific basis of both the draft terrestrial and tributary prioritization plans and note the plans provide sound guidance for a more detailed restoration plan and future restoration activities.

In addition to these support comments specific to the Draft Tributary Plan, most of the 130 comment letters in support of the Advisory Council's *Draft Long Range Guidance Plan* indicate their support of funding aquatic and terrestrial projects based on sound science and their support of our draft prioritization plans as thorough and science-based.<sup>4</sup>

Response: We appreciate the indicated support for the Draft Tributary Plan. Prioritization of the terrestrial and aquatic resources in the UCFRB has been a goal of the agencies, and the Tributary Plan lays the groundwork for future decisions on the aquatic priorities.

#### Category 2: Native fish restoration and potential conflicts between goals

Comments: Five comment letters generally question why native fish restoration was de-emphasized and one comment letter suggests clarifying how native fish will be protected. The Clark Fork Coalition (A-6) and Montana Trout Unlimited (A-10) have similar comments about how the improvement of native fisheries through restoration projects will improve the diversity and resiliency of the entire trout fishery. The U.S. Department of Interior, Fish and Wildlife Service (USFWS) (A-9) expresses concerns that the Draft Tributary Plan may preclude and delay bull trout recovery and westslope conservation by focusing habitat efforts in areas that directly favor non-native fish species that compete, predate on, or hybridize with the native species. The USFWS believes the goals to restore habitat on the tributaries and replace lost trout angling could conflict with maintaining or improving native trout populations. The USFWS also notes that some streams that were not priorities in the Draft Tributary Plan have been designated by USFWS as critical bull trout habitat. Missoula County Health Department Water Quality

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<sup>4</sup> These letters on the *Advisory Council's Draft Long Range Guidance Plan* are provided in our December 2010 draft response to comments on this document, which is available from the NRDP upon request.

District (A-14) states they would rather see preference given to projects for native fisheries over those that enhance non-native sport fisheries. The Confederated Salish and Kootenai Tribes of the Flathead Nation (A-18) comments that native species, particularly bull trout, should be given full consideration for restoration enhancement. The Pat Barnes Chapter of Trout Unlimited (A-3 and A-17) promotes a balance between native and non-native fishery restoration and suggests clarifying how native trout are protected while maintaining the brown trout and rainbow trout fishery.

Responses: We agree that further clarification was needed in the Draft Tributary Plan regarding the balance between native and non-native trout populations. In the Final Aquatic Prioritization Plan, we modified how Goal 3, *maintain or improve native fish populations in the UCFRB to preserve rare and diverse gene pools, maintain to improve ecological function, and improve the diversity and resiliency of the trout population*, is addressed. The Final Aquatic Prioritization Plan explains that the de-emphasis of Goal 3 resulted in removing many fish populations that were biologically or physically disconnected from the mainstems of Silver Bow Creek and the Clark Fork River, which are the major emphasis of the program. In addition, many of the areas that were prioritized as a result of their value for Goals 1 or 2 also have significant native fish value. All areas with viable bull trout populations are included in the priority list regardless of their physical or biological connection to the mainstem. Changes to the Draft Tributary Plan included raising the priority level of several bull trout streams. This is to provide a spatial distribution of high priority native fish conservation areas throughout the drainage to act as a source of fish for the Clark Fork River as its habitat improves. Section B of the Final Aquatic Prioritization Plan (Prioritization of Tributaries) provides additional clarifications specific to native species.

It is a goal of this prioritization effort to enhance native fish populations to the extent that is practical. We have therefore added Section D (Strategies for Fish Management), which discusses our strategy for native fish conservation to protect and enhance existing populations and improve the habitat of the Clark Fork River to be more suitable for these existing populations. It is evident that non-native, competing species will benefit from improvement in the Clark Fork and protection and enhancement efforts in the tributaries. Nevertheless, with careful consideration of the possible biological outcomes of specific restoration actions with respect to native fish, we are confident that native fish populations can improve in the Upper Clark Fork.

We acknowledge the concern pertaining to coordination with the USFWS on bull trout critical habitat and the Recovery Plan. The most recent, and third version, of USFWS Critical Habitat closely resembles our priority areas. We will also cooperate in revising the 2003 USFWS Draft Recovery Plan, and note that the Final Aquatic Prioritization Plan is working towards implementing listed strategic actions of the USFWS Draft Recovery Plan. We do not plan to wait for a final USFWS Recovery Plan, however, since the current draft has not been finalized in over eight years. The Department of Interior holds a seat on the NRDP's Advisory Council. We will continue to work with the Department of Interior on the program's strategy for native fish conservation and implementation of specific projects.

Category 3: Additional deliberation, more public comment or further investigation

Comments: Five Comment letters advocate for a better delineation of where projects would be pursued and how the prioritization process will actually work in terms of implementation before the Final Aquatic Prioritization Plan is implemented. These commenters were: Project Green of Montana, Inc. (A-5), Clark Fork Coalition, (A-6), George Grant Chapter of Trout Unlimited, (A-11), Butte Restoration Alliance (A-15), and Butte Silver Bow, Office of County Commissioners (A-20). Project Green and Butte-Silver Bow requested additional time for public comment (A-5, A-20).

Response: How the Final Aquatic Prioritization Plan would be implemented is beyond the scope of this document. It will be addressed in the subsequent process plan and aquatic restoration plan that will be developed pursuant to the *Final Upper Clark Fork River Basin Long Range Restoration Priorities and Fund Allocation Guidance Plan* (December 2011). These subsequent plans will be subject to additional public comment, similar to the public process that was completed for the Draft Tributary Plan. The Final Aquatic Prioritization Plan was developed to identify where Restoration Funds can best improve the aquatic resources of the UCFRB. Such a plan has not yet existed as part of the grants program. Implementing the appropriate type of project in the priority areas identified in the Final Aquatic Prioritization Plan, consistent with priority scheme reflected therein, will provide the most cost-effective fishery restoration for the UCFRB.

In addition, as recognized in the Draft Tributary Plan, the intent of the plan was not to identify individual projects. Gathering sufficient information on the limiting factors for every stream area in the Basin would take many years and would likely exhaust much of the available resources. Instead, we determined that it would be more cost-effective to gather that level of data on only the highest priority stream areas as needed to develop projects. More discussion of this issue is available the Background and Purpose section in the Final Aquatic Prioritization Plan.

Moreover, as also noted in the Draft Tributary Plan, this prioritization process was intended to change over time. Additional scientific data and adaptive management will be used in subsequent revisions. More discussion regarding this adaptive management approach is in Section B (Mainstem Priorities, p. 5) and Section E (Important Considerations, p. 15) in the Final Aquatic Prioritization Plan.

Regarding the request for additional time for public consideration of the Draft Tributary Plan, we believe adequate opportunity has been provided for public comment and additional public input will exist on subsequent revisions. We produced and posted the Draft Tributary Plan in May 2010. NRDP and FWP staff presented the plans at three public meetings and several some group meetings throughout the basin. We then produced and posted the Proposed Final Aquatic Prioritization Plan and associated draft response document in April 2011 and presented these two documents to the Advisory Council and Trustee Restoration Council at meetings in April and August, 2011, respectively. The Final Aquatic Prioritization Plan recognizes the need for periodic review and adaptive management with public review of any proposed changes in Section E (Important Considerations, p. 15).

Category 4. 2005 Silver Bow Creek Watershed Restoration Plan and priority for areas near Butte

Comments: Jocelyn Dodge (A-8), the Butte Restoration Alliance (A-15), and the Butte Silver Bow Council of Commissioners (A-20), advocate for greater consideration of the *2005 Silver Bow Creek Watershed Restoration Plan (2005 SBC Plan)* in the prioritization process. Dodge and the Butte Restoration Alliance also maintain that the Draft Tributary Plan focuses too much on current value of the fishery and not enough on the Butte area, even though it is the most injured (A-8, A-15). Kris Douglass (A-19) notes that there are many functioning habitats that are very close to the major source of the injury, near Butte, and suggests that these areas be high priority areas.

Response: The Draft Tributary Plan indicated how the *2005 SBC Plan* was considered in the 2010 prioritization effort and the Final Aquatic Prioritization Plan has a new Section D (Strategies for Fishery Management) that connects to the fishery goals of the 2005 SBC Plan. For directing Basin-wide efforts, we do not, however, believe the *2005 SBC Plan* should be given equal weight as the 2010 prioritization plans for the following two reasons:

1. The aquatic and terrestrial priorities identified in our tributary and terrestrial prioritization plans were developed for the entire basin, whereas the priorities developed in the *2005 SBC Plan* were identified strictly for that watershed. The *2005 SBC Plan* and Draft Tributary Plan address priorities on different scales (UCFRB watershed vs. Silver Bow Creek watershed). The *2005 SBC Plan* makes it clear that the relative priorities of restoration needs identified in that plan would likely change in the broader context of all restoration needs within the entire UCFRB.
2. The *2005 SBC Plan* involved a compilation of existing information on the natural resources of that watershed, and was limited to a limited a number of tributaries. The 2010 Draft Tributary Plan was based on a basin-wide methodical assessment of fisheries and riparian habitat that involved collecting comparable data from each stream area.<sup>5</sup> Thus the 2010 prioritization effort involved a more robust scientific analysis than the 2005 effort. The fish populations and riparian habitat assessment data used for 2010 prioritization effort incorporated and expanded upon the fishery information provided by FWP and USFS for the *2005 SBC Plan*.

Even with the limited application of the *2005 SBC Plan* for these reasons, there is general agreement between the *2005 SBC Plan* and the 2010 prioritization effort with regards to priority tributaries in the Silver Bow Creek Watershed. As a result of the comments received, the Final Aquatic Prioritization Plan now includes areas near Butte that were assessed but not prioritized in the Draft Tributary Plan. The Final Aquatic Prioritization Plan now includes the following Silver Bow Creek tributaries as either a Priority 1 or a Priority 2 areas: German Gulch, Browns Gulch, Upper and Beef Straight Creek, Blacktail Creek, Alaska Gulch, American Gulch, and

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<sup>5</sup> 2008 and 2009 Assessment of Fish Population and Riparian Habitat in Tributaries of the Upper Clark Fork River Basin Phase I and Phase II.

<http://doj.mt.gov/wp-content/uploads/2011/06/2009phase1report.pdf>  
<http://doj.mt.gov/wp-content/uploads/2011/06/2009phase2report.pdf>

Flume Gulch. These tributaries constitute nearly all of the major perennial tributaries in the Silver Bow Creek Watershed and even some tributaries that were not discussed in the *2005 SBC Plan*. In addition, we added text to clarify the high priority of the mainstem Silver Bow Creek and Clark Fork River fishery restoration. The Final Aquatic Prioritization Plan discusses these areas in more detail in Section A (Mainstem Priorities) and Section B (Prioritization of Tributaries).

With regards to the comment regarding too much focus of current fishery conditions, it needs to be understood that the driver of the prioritization is how best to restore the mainstem fisheries, building on what are the already completed or planned mainstem remediation and restoration efforts (see Background and Purpose Section). Also, the adaptive management approach allows for adjustment of priorities as conditions change and new information is obtained.

#### Category 5: Priority and restoration needs of the Clark Fork River

Comments: Two comments recommend greater priority to the mainstem Clark Fork River than what is reflected in the Draft Tributary Plan. The City of Deer Lodge (A-12) advocates the Clark Fork River as the highest priority and expresses concern that the Draft Tributary Plan does not allow for any funding for the river. Similarly, the Missoula County Health Department Water Quality District (A-14) suggests that restoration of riparian and wetland habitats along the river's mainstem should be a top priority. The District recommends that the Draft Tributary Plan include the mainstem of the Clark Fork River, as well as the tributaries, and notes that additional Milltown projects and other mainstem projects between Milltown and Garrison may be needed to ensure successful restoration of bull trout and westslope cutthroat trout.

Response: We agree that the importance and priority of the mainstems need to be better clarified. In response to these comments, we broadened the scope of the Final Tributary Prioritization Plan to cover both mainstem and tributary priorities and have clarified that the Clark Fork River and Silver Bow Creek are also high priorities. This is discussed in more detail in the Background and Purpose Section, in Section D (Strategies for Fishery Management) and in Table B in the Final Aquatic Prioritization Plan.

#### Category 6: Expanded or broader approach

Comments: Jocelyn Dodge and the Butte Restoration Alliance both comment that the Draft Tributary Plan is too narrowly focused and that a broader, watershed-based approach should be used (A-8 and A-15). They note that the lawsuit covered broad injuries such as fish, wildlife, surface water, groundwater, soil and vegetation as well as the lost services of wildlife hunting, bird watching, wildlife photography, hiking, fishing floating and general recreation. They perceive the Draft Tributary Plan to be too narrowly focused on trout species and missing aspects of habitat restoration and non-game species enhancement.

Response: We believed a better prioritization would be accomplished by focusing on aquatics in a broad, basin-wide approach. However, by implementing the Final Aquatic Prioritization Plan, which will enhance and protect aquatic resources in the identified priority areas, other resources and their uses referenced in the comments will also be enhanced and protected. For example,

many of the aquatic resources are related to riparian habitat and will require sufficient instream flow. We are likely to attempt increase instream flow in the areas and during the times when it is needed most. This activity will assist other resources, such as aquatic insects and riparian vegetation, which will improve the overall riparian function. To clarify, we added a sentence about trout as indicator species for other aquatic resources, such as aquatic insects, to Section B of the Final Aquatic Prioritization Plan (p. 5).

Category 7: Prioritization of streams based on flow needs

Comment: The Clark Fork Coalition (A-6) and the Missoula County Health Department Water Quality District (A-14) advocate that we prioritize areas for aquatic restoration for stream flow needs. The Pat Barnes Chapter of Trout Unlimited expresses a concern that the Draft Tributary Plan does not specifically mention enhancement of flows as a limiting factor and urges the State to directly address flow enhancement issues (A-3, A-17).

Response: In the Final Aquatic Prioritization Plan, we recognize the need for increasing instream flow as a major component to restoration in a large portion of the UCFRB (see Section A (Mainstem Priorities) and Section C (Strategies for Habitat Enhancement) while we do not believe that determining the flow needs for all tributaries is necessary at this time, determining specific flow needs would be part of the future project development for the priority areas.

Category 8: Species-specific goals and limiting factors for each tributary

Comment: The Clark Fork Coalition suggests including species-specific goals and limiting factors for each tributary to help guide future work (A-6).

Response: Such an effort is outside the scope of the Draft Tributary Plan. We understand, and the Draft Tributary Plan recognizes, that additional information is needed to develop a project. Limiting factors will definitely need to be a portion of, and species-specific goals could be a portion of, the additional information needed for developing future projects. This topic is discussed in more detail in the Background and Purpose Section of the Final Aquatic Prioritization Plan.

Category 9: Gold Creek Correction

Comment: Mark Vetter (A-1) identified an error in the Draft Tributary Plan, noting that Gold Creek is not in Reach A.

Response: This mistake is corrected in the Final Aquatic Prioritization Plan.

# Appendix A

Public Comment on the

*Draft Final Prioritization of  
Tributaries in the Upper Clark  
Fork River Basin for Fishery*

*Enhancement*

*(dated May 2010)*

### TRIBUTARY PRIORITIZATION COMMENTS

<b>NRDP Comment #</b>	<b>First Name</b>	<b>Last Name</b>	<b>Organization</b>	<b>City</b>
A-1	Mark	Vetter		
A-2	Warren	Hampton	Friends of Two Rivers	Milltown
A-3	duplicate of A-7; Comment A-3 has been deleted.			
A-4	Gary	Matson		Milltown
A-5	Brian	Holland	Project Green	Butte
A-6	Chris	Brick	Clark Fork Coalition	Missoula
A-7	John	Wilson	Pat Barnes Chapter of Trout Unlimited	Helena
A-8	Jocelyn	Dodge		Butte
A-9	R Mark	Wilson	US FWS	Helena
A-10	Rob	Roberts	Trout Unlimited	Missoula
A-11	Bob	Olson	George Grant Trout Unlimited	
A-12	Mary Ann	Fraley	City of Deer Lodge	Deer Lodge
A-13	Mike	Mueller	RMEF	Missoula
A-14	Peter	Nielsen	Missoula County Health Department	Missoula
A-15	Suzzann	Nordwich	Butte Restoration Alliance	
A-16	Gary	Matson		Milltown
A-17	Tony	Herbert	Pat Barnes Chapter of Trout Unlimited	
A-18	Earnest T Bud	Moran	CSKT	Pablo
A-19	Kriss	Douglass		
A-20			Butte Silver Bow Council of Commissioners	Butte

NOTE: Comment A-3 has been deleted, as it was a repeat of Comment A-7.  
 Comment A-17 is also a duplicate letter of A-7.

**December 7, 2010, Preliminary Compilation of the Tributary Prioritization Comments:**

1. The prioritization is needed and the plan is a good starting point/the tributary plan is appropriate. [A-2, A-3, A-4, A-6, A-10, A-11, A-12, A-13, A-15, A-16]
2. More deliberation is needed before approving this plan/ further investigation is needed before next draft is written. [A-5, A-6, A-11, A-15, A-20]
3. Do not approve of de-emphasizing Goal 3, (native fish restoration). [A-6, A-9, A-10, A-18]
4. Supplying water from tributaries that don't necessarily have high priority fisheries could be beneficial. [A-6]
5. Coordination with Forest Service and Fish and Wildlife Service. [A-6]
6. List the known limiting factor on each stream. [A-6]
7. Species-specific goals for each tributary. [A-6]
8. A broader watershed approach is needed other lost services need to be considered. [A-8, A-15]
9. Tributary Prioritization may preclude or delay native fish recovery. [A-9]
10. Questions the value of a non-native fishery verses and native fishery. [A-9, A-14]
11. Some non-priority streams are designated as critical habitat for bull trout. [A-9]
12. Conflict between Goals 1 and 2 versus Goal 3. [A-9].
13. Butte areas should be a higher priority. [A-11, A-15, A-19]
14. Clark Fork River should be the highest priority. [A-12, A-14]
15. Mainstem projects between Milltown and Garrison low cost and high benefit. [A-14]
16. Milltown may need additional funds. [A-14]
17. Prioritize streams based on stream flow needs. [A-14]
18. A basin-wide aquatics restoration plan is needed. [A-14]
19. Consider Silver Bow Creek Plan. [A-15, A-20]
20. Comment: Gold Creek-Lower is incorrectly located in Reach A of the Clark Fork River. [A-1]

(See previous page for Commenter's List.)

**Coleman, Kathleen**

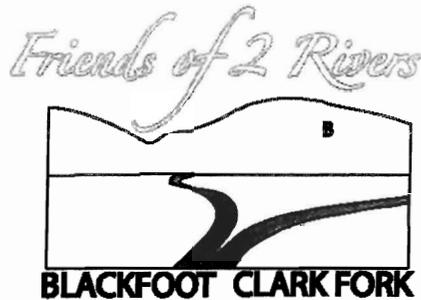
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**From:** Mostad, Tom  
**Sent:** Tuesday, November 30, 2010 10:53 AM  
**To:** Coleman, Kathleen  
**Subject:** Comment on the Trib Priority Plan

Kathy:

Mark Veters of Gold Creek called and stated that there was a mistake in the Trib Plan and the Gold Creek is not located in Reach A, as stated in the plan. It is located in Reach B.

Tom Mostad  
Environmental Science Specialist  
Natural Resource Damage Program  
Dept. of Justice  
406.444.0227



22 November 2010

Ms. Vivian Hammill  
Chair, Trustee Restoration Council  
PO Box 200801  
Helena MT 59620-0801

Dear Ms. Hammill,

Friends of 2 Rivers is a grass-roots organization of Milltown/Bonner area residents. We have been strong supporters of the Milltown Site remediation and restoration, and are happy to offer our comments regarding the "Long Range Restoration Priorities and Fund Allocation Guidance Plan," the UCFRB terrestrial prioritization, and the UCFRB tributaries prioritization.

We offer our strong support for the Advisory Council's proposed Long Range Guidance Plan. Its guidelines will enable the NRDP staff to develop the most appropriate policies and practices for restoring the basin within the substantial constraints that exist because of the complexities and size of the Basin's restoration area.

The terrestrial and tributaries prioritizations are excellent beginning of what will be living documents, revised in time because of the vagueness of biology and environmental conditions. The documents are thorough and science-based, and will provide the NRDP with sound references for guiding restoration effort.

Sincerely,

Warren Hampton, President  
Friends of 2 Rivers

A-2

PUBLIC COMMENT FORM\*

RECEIVED

OCT 13 2010

NATURAL RESOURCE  
DAMAGE PROGRAM

Name Gary Matson  
Address (Street/ P.O. Box) PO Box 308  
Town, State ZIP Milltown MT 59851  
Phone 406 370 6584 Email address gmatson@montana.com  
Affiliation Personal Comment

Please check which document you are commenting on:

- Draft Final Prioritization of Tributaries in the Upper Clark Fork River Basin for Fishery Enhancement, May 2010
- Draft Final Upper Clark Fork River Basin Terrestrial Prioritization, August 2010

Please submit your comments on either of these draft documents in the following space. Attach additional information to this form if you wish. Thank you for your interest.

Both documents are thorough, well-researched, and relevant to the mission of the NRDP. I believe the prioritizations can serve as appropriate references for the allocation of expenditures from NRDP funds.

Of particular importance is the classification, as Priority I areas, of riparian, wetland, and aspen communities as described on Page 9 of the Terrestrial Wildlife Resource Prioritization document:

“All riparian, wetland, and aspen communities are considered high priority for conservation and enhancement efforts in the UCFRB (Figure 6) and thus classified as Priority 1 areas. Conserving those reaches of the main stem Clark Fork, the Little Blackfoot, Flint Creek and Warm Springs Creek where natural hydrologic functions remain active and support perpetuation of mature cottonwood stands is critical. Maintaining connectivity of riparian habitat along the smaller tributaries with that of the larger rivers is as important for terrestrial wildlife species diversity as maintaining stream connectivity for fish. Riparian and wetland communities are highly impacted by activities in the surrounding uplands, so protection of wide upland buffers around riparian and wetland habitats is essential for protecting their full functionality.”

I believe NRDP has three ongoing responsibilities: 1) Restoration of impacted natural resource; 2) Maintain, protect, and monitor restored areas; 3) Provide opportunities for citizens to understand the exceptional nature of the restoration accomplishments. Number 3 is entirely lacking in the prioritization process. The importance of recognizing this restoration accomplishment with its benefits to future generations and as a record for ongoing, planned, or possible future restorations must not be disregarded. Without great expense, the Program can include facilities and projects to promote recognition and appreciation of restoration accomplishments.

*gm*

**\*NRDP must receive comments no later than 5:00 p.m. on November 30, 2010**

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

November 30, 2010

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

**Re: Project Green Comments on the  
*Long Range Restoration Priorities and Fund Allocation Draft Guidance  
Plan for the Upper Clark Fork River Basin.***

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 Advisory Council's *Long Range Restoration Priorities and Fund Allocation Draft Guidance Plan (Plan)*, released in September 2010.

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...*

Given these purposes, Project Green has had an active interest in the NRDP program 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.

More recently, Project Green initiated efforts that ultimately led to the Butte Restoration Alliance, and a Project Green representative has been on the Restoration Alliance since its inception.

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

**1. General Comments.** Project Green appreciates the hard work and dedication of the Advisory Council members in reaching consensus on the Plan. Project Green supports the concept of a long-term plan to guide restoration priorities. Project Green is very supportive of the recitals at the start of Plan (Recitals). For example, the following Recital is excellent:

**Whereas**, the injuries to the resources and services of the Upper Clark Fork River Basin from over 100 years of mining and smelting are pervasive and extensive, the Advisory Council recognizes that no amount of money, with our present knowledge and technologies, can restore fully all the injuries to resources and services and, therefore, the funds that are available need to be expended in a thoughtful and directed manner over a period of years to get us as close as humanly possible to our goal of restoring the Upper Clark Fork River Basin,

The Recitals emphasize that restoration of the areas impacted by the “over 100 years of mining and smelting” should be the highest priority, and they also reflect the restoration funds are limited, reiterating the need to spend these limited funds wisely.

While the Advisory Council did a fine job with the Recitals, details in the body of the Plan do not match up with the Recitals, and given the large amount of funding that will be guided by the Plan, Project Green believes it is critical that the details be refined to match up with the Recitals.

One area is the need to provide high priority to projects which coordinate restoration and remedy activities. As an example, the Greenway Project has coordinated restoration and remedy activities (through the efforts of the Greenway Service District, in partnership with the NRDP and DEQ), with substantial cost savings realized by coordinating such activities, and the Greenway Project has received national awards and recognition as a result. Milltown is another strong example of coordinated remedy and restoration work.

As the 1995 *NRDP Restoration Determination Plan Upper Clark Fork River Basin* stated on page 1-7, “As a matter of policy, coordinating clean-up actions in the Upper Clark Fork River Basin – be they response or restoration actions – makes good sense.” While such

coordination is reflected in the principles stated in the Recitals, the Plan's details do not address such coordination. To that end, the Plan should be refined to recognize the high priority that should be given to coordinated remedy and restoration activities.

In this regard, another detail not reflected in the Plan is the fact that NRDP has not allowed any restoration funds to be spent in the Butte Priority Soils Operable Unit (BPSOU), because NRDP has taken the position that restoration funds cannot be spent in that area until the Consent Decree for BPSOU is finalized<sup>1</sup>. Anaconda Regional Water and Waste is another Consent Decree that has not been finalized. The Plan should be refined to give the highest priority to coordinated remedy and restoration activities, and adequate funds should be held in some type of contingency arrangement until all Consent Decrees are final and appropriate coordination of remedy and restoration activities can take place.

Project Green also noted that much of the Plan follows the 2008 NRDP's Draft Conceptual Framework for an Upper Clark Fork River Basin Restoration Priorities Road Map ("Roadmap"). For example, the Plan's proposed percentages to allocate funds are identical to the Roadmap. Attached is a copy of Project Green's comments to the Roadmap, and to the extent the Plan has similar recommendations as the Roadmap, Project Green has the same comments, and believes the Plan should be refined as recommended in those comments.

In addition to these comments, the following comments address those areas where we believe the Plan needs refinements to match up with the Recitals.

**2. The Silver Bow Creek Greenway Project needs dedicated, full funding.** While Advisory Council members have indicated that they intended the Greenway Project to have full funding under the Plan, a careful reading of the Plan shows it does not have any provisions for dedicated, full funding. The reasons for such funding are set out in the attached comments to the Roadmap, especially because dedicated full funding is consistent with the SSTOU Record of Decision (ROD), which was incorporated into the SSTOU Consent Decree. The ROD addresses - in several places - the end-land use as a recreational corridor that would also serve as institutional controls, which contemplated the Greenway Project. For example, page 105 of the ROD states:

*"Prevent human exposure to the tailings/impacted soils from residential or occupational activity within the SSTOU. This will be accomplished, in part, through institutional controls that will require the entire OU to be developed into a recreational corridor."*

(emphasis added)

Also, page 113 of the ROD states:

*"Provided that the final design of the SSTOU remedy can attain the cleanup criteria and performance standards, it should to the degree possible incorporate*

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<sup>1</sup> Recognizing groundwater replacement projects have been done in Butte, but for different reasons.

*components consistent with the following environmental and community improvement actions in the project area:*

- *A Silver Bow Creek recreational corridor land use as designated and adopted by the Butte-Silver Bow and Anaconda-Deer Lodge County governments;*
- *Preservation and enhancement of significant historical and pre-historical resources in accordance with the Regional Historic Preservation Plan; and;*
- *Coordination with pertinent restoration actions implemented as part of the Upper Clark Fork River Basin natural resource damage restoration plan."*

The ROD was prepared by DEQ, NRDP's sister agency, and changing the Plan to fully fund the Greenway Project will provide consistency between the Plan and the ROD, and provide a common framework between DEQ and NRDP for the end land use of Silver Bow Creek. Dedicated full funding should also improve administrative efficiencies – and result in related cost efficiencies - in the execution of all aspects of the Greenway Project.

Project Green has heard suggestions that funding for the Greenway Project should come out of the "SSTOU Remediation Fund Remainders." While conceptually the project does not care where its funding comes from, as long as it is assured, the problem with this approach is that it creates uncertainty for funding coordinated remedy and restoration activity over the next few years. In other words, if the Greenway Project received its dedicated funding from the SSTOU Remediation Fund Remainder, it presumably could not access those funds until the clean-up work was completed (or at least there would be questions if such funds could be used before the clean-up was completed), and therefore there would be no funds to coordinate the Greenway restoration activity with the ongoing clean-up activity over the next few years. Given this complication, it seems the better approach for dedicated full funding for the Greenway project is to have it inserted in the "Encumbered UCFRB RF's" box in Attachment D to the Plan, or some other restructuring of Attachment D that provides for such dedicated funding. That will ensure the time-critical coordination of remedy and restoration on Silver Bow Creek will continue to be done.

~~3. Dedicate any surplus SSTOU remediation funds to the Silver Bow Creek Watershed.~~ The part of the Plan dealing with the "SSTOU Remediation Fund Remainders" is not as clear as what has been verbally explained by Advisory Council members as to its intent. It indicates these funds may be allocated for projects throughout the Basin, but the language addressing the "exhaustion" of earmarked funds is subject to interpretation and thus raises questions and uncertainties. Advisory Council members have explained the intent of this section, and while Project Green appreciates this part of the Plan was a compromise in order to reach consensus, we believe the better policy decision for these funds is to have them allocated for projects wholly within the Silver Bow Creek watershed, above the confluence of the Warm Springs Ponds and Warm Springs Creek.

While Project Green realizes the SSTOU Consent Decree did not dedicate surplus remediation funds to the Silver Bow Creek watershed area, they can be dedicated as a matter of policy. Surplus Clark Fork River remediation funds are dedicated to that river's watershed area, so why - as a matter of state policy - should there be a difference between the two? Dedicating these surplus funds would be consistent with the framework of the 2008 settlement for three restoration claims – for the Clark Fork River, the Anaconda Uplands and the Butte Area One – to earmark restoration dollars directly to where damages occurred and take advantage of the benefits when integrating remedial and restoration work. The Silver Bow Creek watershed area contains the vast majority of the injured natural resources, and dedicating surplus remediation funds is consistent with the Plan's (and the State of Montana's) stated policy to restore injured natural resources.

Project Green has heard Advisory Council members explain that the intent of allowing funds to be used throughout the Basin is to address the possibility of funding a worthy project downstream of the Warm Springs Ponds; i.e., they did not want to foreclose the possibility of using these surplus remediation funds for a worthy project just because it was downstream. While Project Green appreciates that concern, the reality is that there is no mutuality; i.e., worthy projects upstream cannot tap into surplus CFR remediation funds – those funds are earmarked for the CFR by its Consent Decree. Also, if one reviews the 2005 Silver Bow Creek Watershed Restoration Plan, one can see the projects outlined in it would utilize whatever surplus SSTOU remediation funds become available, and there are likely not enough funds to accomplish all those projects. Given that, and the reasons explained above, Project Green believes the better policy decision is to treat the SSTOU remediation funds the same as the other earmarked funds, and dedicate them to the Silver Bow Creek watershed where they can be used to fund priority projects, as outlined in the Silver Bow Creek Watershed Restoration Plan, or other restoration projects in the watershed that emerge as the remedy in the watershed area continues to be implemented and completed in the next few years.

**4. Aquatic and Terrestrial Plans.** The Plan states that:

Within these two categories, funding decisions should be determined and guided by the comprehensive agency planning documents that are being developed and any subsequent updates and revisions: a) the Tributary Prioritization Plan developed by the Department of Fish, Wildlife & Parks and NRDP (2010), after public comment and recommendation by the Advisory Council and the Trustee Restoration Council and final approval by the Governor, and b) the Terrestrial Wildlife Resource Prioritization Plan developed by the Department of Fish, Wildlife & Parks and NRDP (2010), after public comment and recommendation by the Advisory Council and the Trustee Restoration Council and final approval by the Governor.

(for convenience these will be referred to as the "Tributary Plan" and the "Terrestrial Plan.")

This creates a “chicken and egg” problem that the Plan does not address – how can the Plan state that funding decisions should be determined and guided by draft plans that themselves are in the process of public comment and subject to change? Advisory Council members have explained the intent of this section, and while the goal of having long-range aquatic and terrestrial plans is laudable, the details of the draft plans do not match up with the Recitals, especially the Terrestrial Plan.

The Terrestrial Plan provides that “[P]rioritization efforts focused on replacement goals” and the first two goals listed in it are replacement, not restoration, activity. Moreover, the priority areas for such replacement goals, as illustrated by Figure 5 to the Terrestrial Plan, are well outside the areas impacted “from over 100 years of mining and smelting” and this is at odds with the Recitals, which emphasize restoration in such areas.

Also, in the part of the Terrestrial Plan that addresses restoration as a goal, it limits its focus to only the four terrestrial resource injured areas shown in its Figure 3, and assumes that all restoration projects for such areas have been fully funded - this is not the case. Moreover, this ignores the numerous areas impacted by “over 100 years of mining and smelting” that are not in the Figure 3 areas.

The Terrestrial Plan and the Tributary Plan need much more discussion and comment before these plans are endorsed in any official way by the Plan. The entire premise and approach behind these plans need to be carefully considered, in relation to the principles stated in the Recitals. Project Green would respectfully ask the Advisory Council, the Trustee Council and the Governor to take the time to do a “process check” and critically look at approach behind these plans, and ask themselves if these plans match up with the Recitals and the goal of giving higher priority to restoration, especially coordinated remedial and restoration activities.

**5. Recreational Projects.** The Plan states that:

With respect to aquatic and terrestrial recreational services, the Advisory Council recommends that recreational projects aimed at providing the recreational services that were the subject of *State of Montana vs. ARCO* be considered for funding from the aquatic or terrestrial resource allocation funds only if such projects are located in injured aquatic and terrestrial resource areas covered in the lawsuit or in the priority areas identified in the State’s aquatic and terrestrial priority plans referenced above, and only if such projects offer natural resource restoration benefits, not just recreational benefits. Funding for such projects would come from the either aquatic or terrestrial funds based on the proportion of the project costs attributable to aquatic or terrestrial restoration. Recreation projects that cannot meet these goals would not be eligible for funding.

Advisory Council members have explained the intent of this section, and while Project Green appreciates their intentions, we are concerned the limitations set out in this section will eliminate or restrict eligibility of appropriate projects in the UCFRB headwaters area. Project Green has heard there have been comments that the current NRD projects in Butte to build a

fish pond and improve pedestrian trails in natural areas along the East Ridge would not be eligible for funding if this section of the Plan was adopted as is. These are Projects supported by Project Green. Project Green is aware that the Butte-Silver Bow Council of Commissioners has expressed its concerns with this, and Project Green shares those concerns. While the priority should be on restoration as reflected in the Recitals, to the extent there are appropriate projects that recognize lost recreational opportunities in the communities impacted by "over 100 years of mining and smelting," there should not be a blanket prohibition on such projects as suggested by the Plan.

**6. Additional Time or Opportunity for Comments.** Consistent with the comments above on the aquatic and terrestrial section, Project Green respectfully requests that additional time be allowed for public comment on the Plan, and the Terrestrial Plan and the Tributary Plan, or that some provision be made for an additional opportunity to comment on the next version of them. Given the interrelationship of these plans, the complexity of the subject matter, the magnitude of the dollars involved, and the long-term impact they will have, allowing the public another month or two to provide comments, or at least making it clear the public will have an additional opportunity to comment on the next version of the plans, would be good public policy. Presentations by FWP staff on the Terrestrial Plan and the Tributary Plan were scheduled for the Butte Restoration Alliance's November 23, 2010 meeting, but were cancelled due to the weather and related travel concerns. Project Green's representative and the other members of the Restoration Alliance were very interested in hearing these presentations, and allowing additional time or opportunity for comments would allow these presentations to be rescheduled, and provide the opportunity for additional comments with the benefit of the information presented.

In conclusion, Project Green again commends the Advisory Council for their efforts to develop and craft a consensus-based Plan, and hopefully the comments provided will better refine it. Thank you for the opportunity to comment and we hope our input is helpful.

Sincerely,

*Ben Holland, President*

Project Green of Montana, Inc.

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cc: Project Green Board

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

August 15, 2008

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

**Re: Project Green Comments**  
*Draft Conceptual Framework for an Upper Clark Fork River Basin  
Restoration Priorities Road Map*

Dear Carol:

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 NRDP's Draft Conceptual Framework for an Upper Clark Fork River Basin Restoration Priorities Road Map ("Roadmap"), as released and distributed in March 2008.

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 remediations 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...*

Given these purposes, Project Green has had an active interest in the NRDP program since the program's inception, and in Superfund activities before then. For example, Project

*ATTACHMENT TO NOVEMBER 30, 2010 LETTER*

Green has been involved with the Silver Bow Creek clean-up and the associated 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 present and the ongoing remediation and restoration work. Attached are some early Project Green materials reflecting this activity and the organization's history.

More recently, Project Green initiated efforts that ultimately led to the Butte Restoration Alliance, and a Project Green representative has been on the Restoration Alliance since its inception.

With that background, Project Green appreciates the opportunity to offer comments on the Roadmap, as follows:

- **1. The Silver Bow Creek Greenway Project needs dedicated, full funding.** While Project Green appreciates that the Roadmap allocates \$3.5 million for the Greenway Project, that amount falls far short of the funding required to fully and comprehensively implement the project, including the recreational components designed to ensure public access and enjoyment. Not dedicating full funding to complete the access features of this restoration project (along with the ecological enhancements) threatens the project by:
  - Creating challenges to the coordination of the project – e.g., funds may not be available during the logical sequence of construction, or funds may not be available when opportunities arise for coordinating restoration work with DEQ's remedial work.
  - Increasing costs when work is not coordinated – e.g., extra costs incurred to protect streamside vegetation by going back into those areas to install a pedestrian bridge after the remedial work has already been done.
  - Creating risk that the entire project will not be fully funded, since under the proposed Roadmap the access features are funded out of the grants program, which by its nature creates uncertainty (e.g., no one knows how many project applications will be submitted in any given year).

Dedicated full funding is also consistent with the SSTOU Record of Decision (ROD), which was incorporated into the SSTOU Consent Decree. The ROD addresses - in several places - the end-land use as a recreational corridor. For example, page 105 of the ROD states:

*"Prevent human exposure to the tailings/impacted soils from residential or occupational activity within the SSTOU. This will be accomplished, in part, through institutional controls that will require the entire OU to be developed into a recreational corridor."*

(emphasis added)

Also, page 113 of the ROD states:

*"Provided that the final design of the SSTOU remedy can attain the cleanup criteria and performance standards, it should to the degree possible incorporate components consistent with the following environmental and community improvement actions in the project area:*

- *A Silver Bow Creek recreational corridor land use as designated and adopted by the Butte-Silver Bow and Anaconda-Deer Lodge County governments;*
- *Preservation and enhancement of significant historical and pre-historical resources in accordance with the Regional Historic Preservation Plan; and;*
- *Coordination with pertinent restoration actions implemented as part of the Upper Clark Fork River Basin natural resource damage restoration plan."*

The ROD was prepared by DEQ, NRDP's sister agency, and changing the Roadmap to fully fund the Greenway Project will provide consistency between the Roadmap and the ROD, and provide a common framework between DEQ and NRDP for the end land use of Silver Bow Creek.

Dedicated full funding should also improve administrative efficiencies – and result in related cost efficiencies - in the execution of all aspects of this project.

Finally, the Greenway Project's access features are essential to providing the public access to the corridor. Public access was a central part of the vision for the Greenway, and Project Green's work on it, as reflected in the attached materials.

**2. Dedicate any surplus SSTOU remediation funds.** While Project Green realizes the SSTOU Consent Decree did not dedicate surplus remediation funds to the Silver Bow Creek watershed area, they can be dedicated through the Roadmap as a matter of policy established by the Governor as Trustee. Surplus Clark Fork River remediation funds are dedicated to that river's watershed area, so why - as a matter of state policy - should there be a difference between the two? The Silver Bow Creek watershed area contains the vast majority of the injured natural resources, and dedicating surplus remediation funds is consistent with the State of Montana's stated policy to restore injured natural resources.

Surplus SSTOU remediation funds should be used to a) complete the remedial action on Silver Bow Creek, including any repairs or improvements needed on certain sections that do not meet performance standards, and the creation of a sufficient trust for long-term operation, maintenance and monitoring of the remedy; and b) fund priority projects, as outlined in the 2004 Silver Bow Creek Watershed Restoration Plan, or other restoration projects in the watershed that emerge as the remedy continues to be implemented and completed in the next few years. Project Green has great interest in seeing the projects in

the Watershed Restoration Plan implemented, including a fishing pond for kids, and improved wetlands.

Dedicating these surplus funds would be consistent with the framework of the 2008 settlement for the three restoration claims – for the Clark Fork River, the Anaconda Uplands and the Butte Area One – to earmark restoration dollars directly to where damages occurred and take advantage of the benefits when integrating remedial and restoration work.

**3. Increase the “Contingency” from 5% to at least 15-20%.** Project Green is concerned that the 5% contingency amount is too low. Experience shows that “things happen” and setting aside more for contingency at this point in time is prudent. The contingency amount can be reevaluated down the road as more experience is gained. A higher contingency would also better reflect the reality that at least two consent decrees are not finalized, i.e., Butte Priority Soils and Anaconda Regional Water and Waste, which translates into considerable uncertainty in these two headwater communities.

**4. Revise the percentages used.** The percentages on the “60%” side of the draft Roadmap should be revised as proposed by Butte-Silver Bow. Using percentages based on the original claims – versus percentages based on the actual settlements – ignores the fact that the lawsuit settled the claims for much less than the amounts sought. The State of Montana spent millions of dollars putting its claims together and documenting the actions and associated costs to restore the injured natural resources. Those damage costs are far greater than the settlements. Therefore, if the stated priority of the State of Montana is restoration of the injured natural resources, then common sense dictates that priority will be given to spending the limited dollars received in the settlement on those injured natural resources. The Roadmap’s percentages are inconsistent with giving priority to injured natural resources, and give undue weight to the compensable claims, factoring them in at 100 cents on the dollar. Moreover, doesn’t the “40%” side of the Roadmap reflect some component of compensable damages, in effect double-counting compensable damages to some degree. In any case, if the priority is the injured natural resources, then the percentages used to prioritize funding should reflect that policy, based on the actual amounts recovered in the settlement.

**5. Provide for greater decision-making at the local level.** The Roadmap describes increased centralization of project administration and decision-making in Helena. While Project Green appreciates various aspects of the NRDP program – such as the Advisory Council – reflect local input, the reality is that staff drives how the program functions. Having no staff – none - located in the Upper Clark Fork River Basin (Basin) just doesn’t seem to make sense. Anyone who has worked on a project knows the value of being in the middle of where the work is being done. Now that the NRD litigation is mostly done, the Governor as Trustee should take a fresh look at the program and critically consider why no staff are working on a daily basis where the restoration and remedial work is being done. Restructuring the program to put staff in the Basin is also consistent with the Governor’s efforts to grow the restoration economy in the Basin.

As a final comment, Project Green notes its disappointment in the process used to develop the Roadmap. NRD staff developed the Roadmap essentially on its own without involving the stakeholders in the Basin first. The local governments and many citizens have been involved with the NRD program for the past two decades. Stakeholders would have appreciated a collaborative process built on consensus and the exchange of differing points of view. Instead, the process has resulted in division and discord. Compounding this was the rush to get the NRDP staff's version of the Roadmap distributed as the tacitly "approved" version for comment. Instead of a collaborative process where consensus would result in stakeholders supporting the outcome, the process used here resulted in a large group of stakeholders finding themselves in a situation of having to challenge the "approved" version and feeling as if their comments are treated as attacks to be defended against. This situation brings to mind a saying – "good people plus a good process equal a good result" - it's unfortunate the second part of the equation wasn't met in this case.

Project Green would respectfully ask the NRDP staff, the Advisory Council, the Trustee Council and the Governor to take the time to do a "process check" and critically look at the process used to develop the Roadmap, and then take whatever amount of time is needed for a collaborative process to explore and evaluate alternatives, and gain bona fide public acceptance on a final Roadmap.

Thank you for the opportunity to comment.

Sincerely,

Project Green of Montana, Inc.

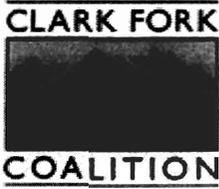
**Coleman, Kathleen**

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**From:** Brian Holland [bholland@crowleyfleck.com]  
**Sent:** Tuesday, November 30, 2010 3:23 PM  
**To:** Natural Resource Damage Program  
**Subject:** Comments on Advisory Council Guidance Plan  
**Attachments:** Project Green Letter to V. Hammill.pdf

Attached please find comments on the Advisory Council's Guidance Plan from Project Green. Thank you for your attention. Please contact me if you have any questions.

Brian Holland  
for Project Green  
65 E. Broadway  
Butte, MT 59701  
(406) 533-6893



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

November 29, 2010

To: Natural Resource Damage Program, Montana Department of Justice

RE: Comments on the Upper Clark Fork River Basin Prioritization Reports for Fishery Enhancement and Terrestrial Wildlife Resources

The Clark Fork Coalition, a conservation organization of 1,500 members throughout the Clark Fork watershed, appreciates this opportunity to comment on the two natural resource prioritization reports produced by Montana Fish Wildlife and Parks and the Natural Resource Damage Program, "*Prioritization of Tributaries in the Upper Clark Fork River Basin for Fishery Enhancement*" and "*Upper Clark Fork River Basin Terrestrial Wildlife Resource Prioritization*."

We recognize and value the considerable thought and effort that have gone into development of these two reports. In a general sense, we feel that these reports lay the necessary foundation for effective restoration of the basin's injured natural resources, as claimed in *State of Montana V. ARCO*. More specifically, we agree with the overall goals for both fisheries and terrestrial prioritization, although in the case of the fishery prioritization, we disagree with the policy preference that de-emphasizes the importance of native fish.

At public presentations and in separate discussions with FWP staff, we've heard that both of these documents are intended to evolve over time as new data are collected, as restoration projects begin to reap benefits, or as new information is brought to the attention of FWP biologists. This is a wise tactic and we fully encourage updating and refining these prioritizations consistent with the original goals of the restoration effort. Our specific comments on each of these reports follow.

*I. Prioritization of Tributaries in the Upper Clark Fork River Basin for Fishery Enhancement*

1) While we agree with the three overall goals of the tributary prioritization as listed on the first page of the document, we are disappointed that goal 3, improvement of native fisheries, is de-emphasized in the subsequent prioritization methodology. That's not to say that the policy emphasis on restoring the sport fishery and the emphasis on Reach A is necessarily wrong, but we believe that by that improving the diversity and resiliency of the ENTIRE trout fishery, including the natives, we'll achieve the first two goals of this restoration effort as well. Conversely, by focusing more narrowly on goals 1 and 2, as this document does, we'll not achieve goal 3. There is no explanation in this document as to why restoration of the native fishery is de-emphasized to such a large extent.

2) It's worth noting that while the emphasis of this prioritization is on Reach A, the mainstem of the Clark Fork River between Drummond and Rock Creek, Reach B, has lower trout density than upstream areas. The potential causes of this are unknown, but should be investigated before the next prioritization report is written.

3) There are a number of streams that were assessed but not prioritized, generally because they lack important fisheries in the sampled reaches. While the report points out that the prioritization did not attempt to quantify other possible ecosystem values of these streams, such as supplying cold clean water to the mainstem, these other values should be taken into account in the assessment of particular restoration projects.

In other cases, either data from 2009 and 2010 was not brought to bear on the prioritization, or no data has been collected at all on certain streams. We hope that new information is incorporated into the prioritization effort as promptly as possible. In general, we recognize that this prioritization report, while it is a solid starting place, may not necessarily be the final word on where funds can be most effective for restoration.

4) We recognize that this prioritization effort is specific to NRDP funding and does not encompass all of the priorities of FWP. Yet a restoration effort of this magnitude should recognize and coordinate with ongoing programs by other agencies, most notably the U.S. Fish and Wildlife Service and the U.S. Forest Service. These agencies are strongly emphasizing the recovery of native fish. Coordination of NRDP-FWP activities with these native fish conservation efforts is critically important to the overall success of fishery restoration in the upper Clark Fork. It would be helpful if the final draft of the prioritization report would include a section on how NRDP and FWP are coordinating with the efforts of these agencies.

5) Some of the most important information used to develop the prioritizations, the actual scores assigned to each goal in each tributary, are not included. These scores should reflect the biologist's best knowledge of limiting factors in each stream. In future prioritizations, it would also be helpful to list the known limiting factors for sport and native fisheries in each tributary. This would be extremely helpful in identifying and prioritizing specific projects moving forward.

6) In order to improve the identification, prioritization, and development of appropriate projects in each tributary, it would be helpful to have concrete, species-specific goals on each tributary. For example, "restore habitat to facilitate increased brown trout spawning in the lower two miles," or "provide seasonal fish passage for adult fluvial cutthroat, and downstream migrating juveniles on the lower seven miles of the stream." This is one of the next steps in planning fisheries restoration for the upper Clark Fork. Gradual inclusion of this type of information for key, high-priority tributaries in the next version of this document would be desirable.

7) Finally, we fully agree with the strategy for habitat protection and enhancement on page 7, and with the recommendation that this prioritization be updated every two years within the first five years. We hope that FWP staff will continue to discuss their work, trade ideas, and collaborate with groups and individuals that are working in the basin such as the Clark Fork Coalition, Trout Unlimited, and the Watershed Restoration Coalition.

## II. Upper Clark Fork River Basin Terrestrial Wildlife Resource Prioritization

We generally agree with the goals and methodology of the terrestrial prioritization. In particular, we agree that simply increasing public access or creating parks will not result in enhanced recreational opportunities if the wildlife and habitat resources themselves are not improved.

1) Habitat improvement and public access should go hand in hand, although we believe that habitat protection and improvement should be the highest priority. In particular, we fully agree with the high priority designation for all riparian, wetland, and aspen communities. These are some of the richest and most valuable habitats in the basin. In some cases, riparian areas of streams prioritized for fisheries are also key to wildlife, and restoration projects for both fish and wildlife can be combined. In other cases, riparian protection and restoration for wildlife will be worthwhile in its own right, distinct from any associated fisheries values.

2) We strongly believe that the focus of wildlife habitat improvement should be on private lands in the upper Clark Fork. We believe that these lands can remain in sustainable and productive agricultural use, while simultaneously improving wildlife habitat values, and providing hunting and other recreational opportunities. Acquisition of private lands by the state is not necessary to accomplish the wildlife habitat improvement goals, but partnering of NRD funds with other private, state and federal programs for terrestrial wildlife habitat improvement is often the best use of these funds.

3) As with the aquatic prioritization, we hope that this will be an evolving document as new data are collected and as local information becomes available. NRDP and FWP should work closely with groups and individuals that have on-the-ground experience in the basin – such as landowners, hunting groups, wildlife groups and land trusts – to continually refine the terrestrial prioritization and to develop projects.

Thank you for the opportunity to comment.

Sincerely,

Chris Brick  
Science Director  
Clark Fork Coalition

P.O. Box 7539  
Missoula, MT 59807

406.542.0539 ext 202  
[chris@clarkfork.org](mailto:chris@clarkfork.org)

Will McDowell  
Stream Restoration Director  
Clark Fork Coalition

P.O. Box 7539  
Missoula, MT 59807

406.542.0539 ext 204  
[will@clarkfork.org](mailto:will@clarkfork.org)

Comments on **Draft Final Prioritization of Tributaries in Upper Clark Fork River Basin for Fishery Enhancement** (May 2010) submitted by the Pat Barnes Missouri River Chapter of Trout Unlimited (PBMRTU). Contact John Wilson, Conservation Committee Chair, [jwilmt@msn.com](mailto:jwilmt@msn.com). 405 Monroe Ave. Helena, MT 59601

Though our name does not imply it, PBMRTU has long considered the Little Blackfoot watershed as an important and popular trout fishery within our sphere of influence. In the past we have actively participated in both stream rehabilitation and fisheries research projects in the Little Blackfoot watershed. We welcome the opportunity to provide comments on the Draft Final Prioritization of Tributaries in Upper Clark Fork River Basin for Fishery Enhancement.

We think that undertaking the "Prioritization" is smart fishery resource management that will guide allocation of financial resources and collaborative efforts ultimately resulting in an enhanced, revitalized and protected trout fisheries resource. As outlined in the draft, it's a good idea that we support and wish to join the collaborative process.

We generally agree with the three trout fisheries prioritization goals in the draft and the resultant selection of streams and stream reaches most likely to contribute to attaining those goals.

It is clear from reading the draft that the efforts are targeted at trout populations, habitats and enhancements. That is good. We think it is important to clearly emphasize "wild" trout and natural propagation and recruitment. We think this is what you have in mind, and perhaps obvious to you, but your overall direction will be greatly clarified by referring to trout as "wild" and not hatchery raised.

We strongly support the maintenance and/or improvement of native trout populations (bull trout and westslope cutthroats) not just to preserve the gene pool but additionally because these trout are adapted to these environs through many generations. They are our best bet. Yet, it is important to recognize the value of brown and rainbow trout as part of the recreational fishery. Given hybridization and predation risks it is a difficult balance to strike with native fish. We regrettably do not think brown and rainbow trout can or should be removed from the Upper Clark Fork. Frankly they provide some of the better fishing for anglers. Your prioritization would be perhaps clearer if you outlined how you are going to protect native fish (which we support) while maintaining the popular brown and rainbow trout fishery. A tough problem, we urge balance.

Despite the draft not being a comprehensive assessment for each watershed, particularly identifying “limiting factors”, we believe based upon our experience your professional judgment is close to being spot on. We are comfortable with the expression of this judgment in the draft. However we are concerned that while the draft is clear in its resolve toward habitat enhancement it does not specifically mention correction and enhancement of flow “limiting factors”. In our judgment flow enhancement, particularly at identified times of the year (See Dave Ames research) are a critical priority element not only in enhancement of the Little Blackfoot trout fishery, but flow benefits domino downstream throughout the whole Upper Clark Fork and all of the identified reaches. We also know that flow issues are difficult to resolve. We urge you to creatively and directly address flow enhancement issues.

The saying goes “they aren’t making any new trout streams”. Your thoughtful and strategic prioritization of the Little Blackfoot River and its tributaries will outdate that statement and rejuvenate a trout fishery for future generations. We commend you and offer our assistance.

John Wilson

Conservation Committee Chair

405 Monroe Ave. Helena, MT 59601

406-443-2884

## PUBLIC COMMENT FORM

Name: Jocelyn Dodge

Address (Street/ P.O. Box) 114 Waldron

Town, State ZIP Butte, MT 59701

Phone Email address 533-0727 jocedodge@gmail.com

Affiliation individual

Please check which document you are commenting on:

Draft Final Prioritization of Tributaries in the Upper Clark Fork River Basin for Fishery Enhancement, May 2010

Draft Final Upper Clark Fork River Basin Terrestrial Prioritization, August 2010

I feel strongly that the two FWP prioritization plans are too narrowly focused and that instead, a much broader, watershed-based approach needs to be considered. The injuries identified by the State of Montana for restoration are very broad and more closely represent watershed damage than the limited injuries addressed in the proposed FWP plans. The natural resources which the State considers injured include fish, wildlife, surface water, groundwater, soil, and vegetation. Injuries also include the amenities provided by soils, vegetation, wildlife habitat, and wildlife hunting, bird watching, wildlife photography, hiking, fishing, floating, and general recreation.

The Terrestrial Prioritization Plan develops a broad background of “restoration or replacement of terrestrial wildlife resources,” including both riparian and wetlands, but focuses on replacing injured elk and other big game resources. Riparian and wetland habits were well identified as “extremely important” but the connections between floodplain corridors, wetland habitats, riparian habitats and main stem aquatic habitats, was not developed. The figures appear to indicate that the Butte area has no injured terrestrial wildlife resources, but in fact the Butte area has many watersheds that include riparian areas and wetlands that are severely injured, and these areas should be given higher priority for restoration. Wildlife corridors and protection of habitat adjacent to National Forest lands should also be considered for the Butte urban area. While some of these areas may be small (less than 10,000 acres); they are critical to protect and be used as replacement of lost wildlife habitat as these lower elevation areas, most of which are privately owned, are being subdivided. This could cause management issues between potential subdivision landowners and wildlife similar to what other communities such as Missoula and Helena area experiencing.

Although non-game animals are included in the document’s background sections, non-game animals are not included in the prioritization process, and should be considered as a major part of any terrestrial resources restoration effort. I would like to see FWP consult the local wildlife biologist in the Silver Bow Creek watershed (SBC), in the terrestrial prioritization process to evaluate the SBC watershed with respect to all species, habitat, migration, and not exclusively large game.

The Aquatic Prioritization Plan is an excellent document for trout fishery enhancement throughout the Upper Clark Fork River Basin. However, the prioritization methodology is focused only on the "current fishery," and any proposed future fishery that is produced by the intense restoration of highly injured areas received low tributary prioritization ratings. Also, the document does not include the basic aquatic aspects of habitat restoration and non-game species enhancement were not an element of the process. These must be considered as a major part of any aquatic resources restoration effort. The plan should address all aquatic species, sediment concentrations, sediment budgets and dissolved oxygen levels in gravels and their impacts on the general health of aquatic systems.

The two new FWP plans, along with the Silver Bow Creek Watershed Plan, need to be considered together to create a more comprehensive prioritization of the SBC and CFR watersheds. I request that the Council recognize the Silver Bow Creek Watershed Restoration Plan (2005) as an equally important planning document for prioritizing spending, and that it be specifically mentioned as a third document that will be used as a basis for funding decisions. One of the most valuable elements of this document is its careful identification of data gaps that need to be filled as part of a comprehensive restoration effort as well as the extensive public participation process that took place to educate and gather feedback on watershed priorities. Additional work is needed to prioritize the best plans for aquatic and terrestrial restoration in the watershed.

Thank you for considering of my comments and I look forward to discussing them with you.

**Coleman, Kathleen**

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**From:** Jocelyn Dodge [jocedodge@gmail.com]  
**Sent:** Tuesday, November 30, 2010 3:32 PM  
**To:** Natural Resource Damage Program  
**Subject:** Public comments to Draft Final Terrestrial and Tributary Plans  
**Attachments:** PUBLIC COMMENT FORM.docx

Please accept my comments to the Draft Final Terrestrial and Tributary Plans. Thank you



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
ECOLOGICAL SERVICES  
MONTANA FIELD OFFICE  
585 SHEPARD WAY  
HELENA, MONTANA 59601  
PHONE (406) 449-5225, FAX (406) 449-5339

File: M.29 Natural Resource Damage Program

November 30, 2010

Kathy Coleman  
Post Office Box 201425  
Helena, Montana 59620-1425

Dear Ms. Coleman:

This letter responds to your request for comments on the Draft Prioritization of Tributaries in the Upper Clark Fork River Basin for Fishery Enhancement. Please be apprised that the U.S. Fish and Wildlife Service (Service), per our mandate under the U.S. Endangered Species Act, has been engaged in more than a decade of collaborative efforts to recover bull trout throughout the Clark Fork River system. While the Service is generally supportive of prioritization and planning exercises aimed at increasing the effectiveness of conservation delivery, the Service is concerned that the current NRDP prioritization may preclude and or delay bull trout recovery and westslope cutthroat conservation by focusing habitat restoration efforts in areas that directly favor non-native fish species that compete with, predate on, or hybridize with the native species.

In general, the Service feels that the prioritization scheme does not provide commensurate prioritization for native species. As stated on page 1 of the Draft Prioritization report (dated May 2010), goals 1 and 2 emphasize restoration of the mainstem fishery and replacement of lost trout angling opportunities. In turn, the prioritization methodology and fishery valuation methodologies (pages 3 and 6) emphasize a restoration and replacement fishery where the rating is based on current conditions. Value as a native fishery is the third goal. Given current conditions, this valuation approach inherently favors non-native trout which have displaced or replaced native species in many habitats. The Service notes that the lost recreational fishing opportunities, which occurred a century or more ago (and which the NRDP process proposes to address) were for native fishes, such as bull trout and westslope cutthroat trout. The Service thus wonders whether the methodology adequately considers the value the citizens of Montana may place on restoring a native fishery with something that is qualitatively different (i.e., a non-native fishery).

More specifically, the prioritization methodology does not recognize the potential conflict of goals 1 and 2 (restoring the mainstem fishery and lost angling opportunities) with goal 3 (maintaining or improving native fish populations). The current management emphasis makes it difficult to clearly demonstrate a balance between native and non-native species. For instance

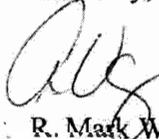
the "unranked" and "assessed, priority pending" areas are, by default, not priority areas. The Service, on the other hand, recognizes many of these non-priority areas as current or future important bull trout spawning and rearing habitat and has recently designated a number of the streams in the Upper Clark Fork as bull trout Critical Habitat (see attached map of designated critical habitat). The prioritization reflected in the NRDP report on page 6, where a clear "preference for projects that help achieve fishery goals 1 and 2 (recruitment to the mainstem and replacement of lost angling opportunities)" is thus inconsistent with goal 3 in places where non-native trout are anticipated to interact with bull trout.

The Service is aware that habitat conditions are currently limiting factors for native species conservation in many areas. However, by emphasizing specific tributaries for restoration efforts which have the most potential to recruit brown trout and rainbow trout to the fishery, the plan inadvertently aggravates the proliferation of non-native competing fish species, arguably the single greatest factor limiting conservation of bull trout and westslope cutthroat trout. Thus, establishment and recruitment of brown trout to enhance and expand the mainstem Clark Fork fishery could further preclude future options for recovery of native fish, thereby delaying or negating the considerable bull trout recovery efforts of the Service and our partners, including the State of Montana.

While the Service recognizes the purpose of the NRDP prioritization exercise is not focused on native species, without a clear strategy to balance the non-native species focus, it is difficult to determine how future native species conservation opportunities will be maintained. Please consider delaying adoption and/or implementation of this prioritization process until: (a) bull trout recovery efforts can be fully weighed and integrated; and (b) objectives outlined in the Memorandum of Understanding and Conservation Agreement for westslope cutthroat trout (see <http://fwpiis.mt.gov/content/getItem.aspx?id=28662>) are more explicitly considered.

We are planning to revise the 2003 DRAFT Bull Trout Recovery Plan in the coming 18 months and will be engaging Montana Fish, Wildlife and Parks and other partners in a meaningful process to determine whether priorities that mutually benefit bull trout and the mainstem fishery of the Upper Clark Fork can be identified. We look forward to continuing this dialogue with you at that time. In the meantime, please feel free to contact me or my staff if you wish to discuss further ideas.

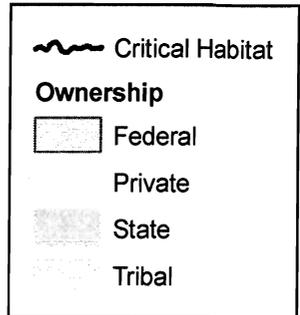
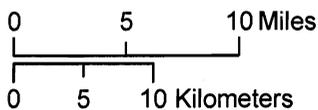
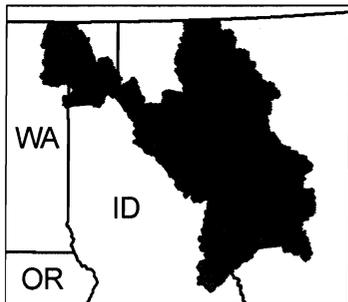
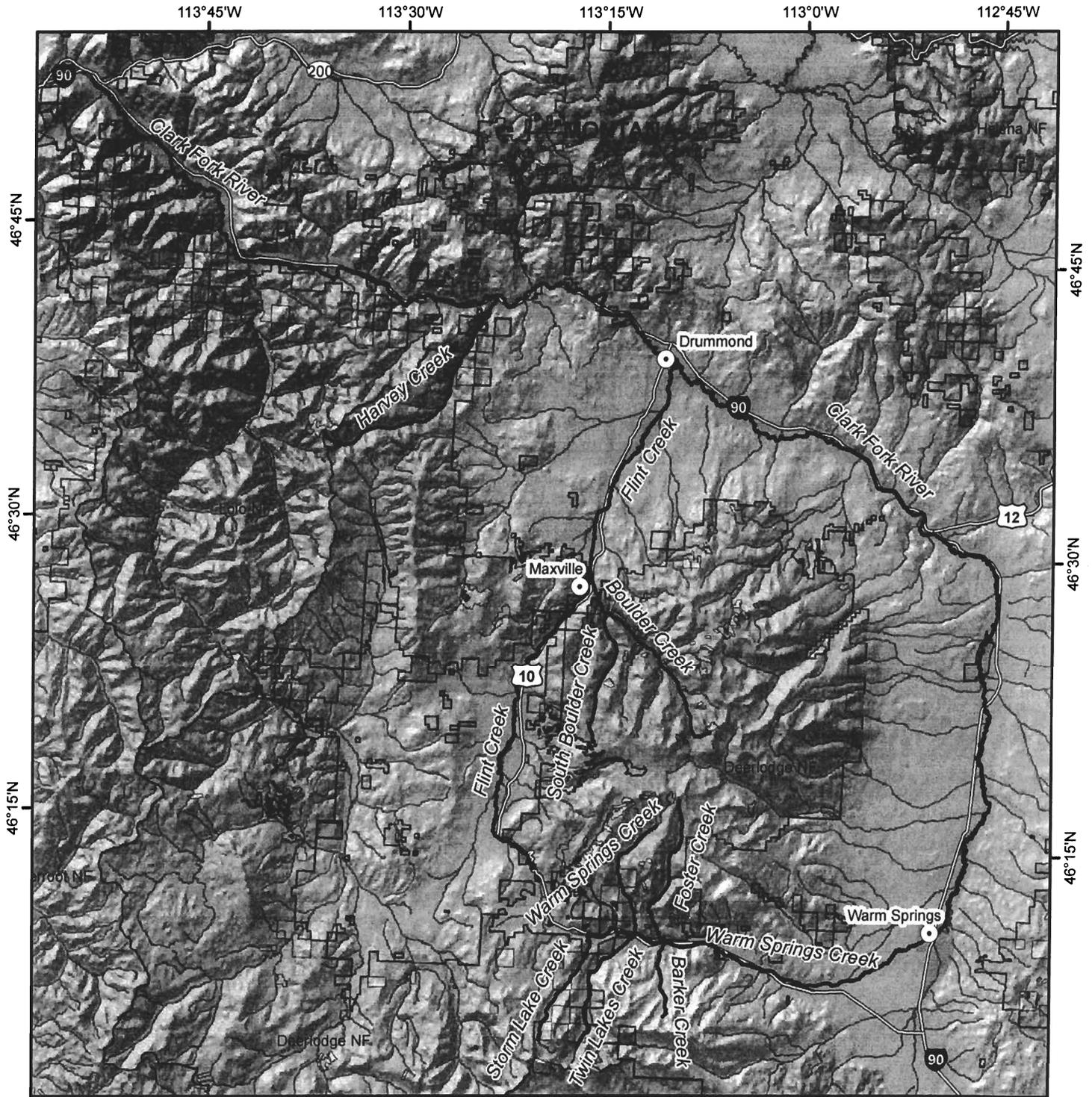
Sincerely,



R. Mark Wilson

# Critical Habitat for Bull Trout (*Salvelinus confluentus*)

## Unit: 31, Sub-Unit Upper Clark Fork



## Coleman, Kathleen

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**From:** doug\_peterson@fws.gov  
**Sent:** Tuesday, November 30, 2010 4:00 PM  
**To:** Natural Resource Damage Program  
**Cc:** Mark\_Wilson@fws.gov; karen\_nelson@fws.gov; Wade\_Fredenberg@fws.gov; Dan\_Brewer@fws.gov  
**Subject:** USFWS Ecological Services comments on Draft Final Prioritization of Tributaries in the Upper Clark Fork Basin for Fishery Enhancement, dated May 2010  
**Attachments:** 2010 11 30 Wilson\_Coleman Comments on NRDP Upper Clark Trib Prioritization.pdf; Upper Clark Fork River MT Bull Trout CH.pdf

Dear NRDP:

Please accept the following comments (with attachments) from the US Fish and Wildlife Service on the Draft Final Prioritization of Tributaries in the Upper Clark Fork Basin for Fishery Enhancement, dated May 2010.

Sincerely,

-----  
Doug Peterson  
Fishery Biologist  
US Fish and Wildlife Service  
585 Shepard Way  
Helena, Montana 59601

Phone: 406.449.5225 x221, Fax: 406.449.5339

*(See attached file: 2010 11 30 Wilson\_Coleman Comments on NRDP Upper Clark Trib Prioritization.pdf)(See attached file: Upper Clark Fork River MT Bull Trout CH.pdf)*



To: Natural Resource Damage Program, Montana Department of Justice

November 29, 2010

RE: Comments on the prioritization document for fishery enhancement in the Upper Clark Fork River Basin

Trout Unlimited thanks the Natural Resource Damage Program and Montana Fish, Wildlife and Parks for the opportunity to comment on the “*Prioritization of Tributaries in the Upper Clark Fork River Basin for Fishery Enhancement.*” Trout Unlimited is a national organization with more than 140,000 members in 35 states dedicated to preserving, protecting and restoring coldwater fisheries. TU has extensive experience in the state of Montana working with local, state and federal organizations – including Montana Fish, Wildlife and Parks – on large scale restoration projects. For example, in the last two, TU has spearheaded more than \$1 million worth of native fish restoration and mine reclamation projects in the Ninemile Creek watershed alone - on public and private land.

TU commends the considerable thought and effort that went into the fisheries prioritization document and the strategic approach taken by MFWP biologists and Natural Resource Damage Program staff. The Upper Clark Fork covers a large geographic area with diverse habitats and land ownership patterns and, although there are significant financial resources available for fisheries restoration work, it is imperative that stakeholders develop a well-coordinated, collaborative program to effectively implement projects to have the most effective impact on fish populations and natural resources. The fisheries prioritization document is an important first step in this process and creates a logical framework for expending funds. It also recognizes the inherent limitations of insufficient assessment and changes through adaptive management that will invariably occur in the future.

TU agrees with the three stated goals for the tributary prioritization as outlined in the document. However, it is disappointing to see the de-emphasis on native fish in the section Prioritization of Areas and a preference for projects that achieve only fishery goals 1 and 2. There is no stated justification for this standpoint. Likewise, this valuation ignores some of the current data collection efforts by MFWP (survey of irrigation structures for native fish as referenced on page 2), as well as the objectives of the Memorandum of Understanding and Conservation Agreement for Westslope Cutthroat and Yellowstone Cutthroat in Montana developed by MFWP and a diverse group of stakeholders. Native fish are an important indicator of watershed health. Bull trout survive only in clean, cold water in some of the highest quality aquatic habitat left in the Upper Clark Fork River, such as Warms Springs Creek, Boulder Creek and Harvey Creek. By putting preference on projects that improve native fish habitat and connectivity, project organizers would inherently achieve other fisheries goals of improving the mainstem fishery and replace lost trout angling. In other

words, moving native fish from the mainstem river to tributaries and back means moving clean, cold water as well.

TU agrees in general with the discussion in the section entitled *Strategy for Habitat Protection and Enhancement*. We would like to note, however, that much of the intact, high quality habitat in the Upper Clark Fork River basin is on private land, or that much of these potential habitats are on private land. At the same time, streams and rivers are linear, so large scale land purchases – while potentially useful in certain instances - may only protect relatively small areas (for large dollar amounts) when it comes to fishery value and should not be seen as the highest priority for fund expenditures. The largest benefit to the overall fishery in the basin will likely be through focusing mitigation dollars on items 2 and 3 in this section: reconnecting fragmented habitats and restoring hydrologic, sediment transport and riparian conditions. Conservation easements may be an equally effective tool. For example, acquiring or protecting land parcels will not necessarily estore natural streamflow conditions to tributaries or open migration barriers, if irrigation diversions or other agricultural practices are dewatering and impairing streams on adjoining parcels.

The prioritization is a solid starting point for restoration work in the basin, and TU recognizes that NRDP funding is driven by legal mandates contained in the settlement. At the same time, this is a historic opportunity to develop a long term, strategic vision for fisheries restoration throughout the Upper Clark Fork River and tributaries. TU hopes that NRDP and MFWP staff and other interested parties have the patience and foresight to continue to collect meaningful data, incorporate that data into future iterations of this report and methodically pursue projects that will have the greatest impact on the fisheries resource. TU also understands that effective restoration projects are often complex, involve multiple collaborators and take several years or more to develop. TU looks forward to working with the prioritization document authors and other stakeholders to make connection with landowners, acquire matching funds to extend NRDP dollars and make this large scale vision a reality. In this spirit, we hope that MFWP and NRDP staff will continue to collaborate with groups and individuals that are working in the basin such as the Clark Fork Coalition, Trout Unlimited, and the Watershed Restoration Coalition.

Thank you for the opportunity to comment.

Sincerely,

Rob Roberts  
Clark Fork Watershed Program Director  
111 N. Higgins, Suite 500  
Missoula, MT 59802  
[rroberts@tu.org](mailto:rroberts@tu.org)

**Coleman, Kathleen**

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**From:** Rob Roberts [RRoberts@tu.org]  
**Sent:** Tuesday, November 30, 2010 4:36 PM  
**To:** Natural Resource Damage Program  
**Subject:** Comments on Fisheries Prioritization  
**Attachments:** TU comments - UCF Prioritization.pdf

Please see attached comments. Thank you.

Rob Roberts  
Clark Fork Watershed Program  
Trout Unlimited  
111 N Higgins St, Suite 500  
Missoula, MT 59802  
406-543-1192  
[rroberts@tu.org](mailto:rroberts@tu.org)



November 30, 2010

Carol Fox  
Natural Resource Damage Program  
1301 East Lockey  
Helena, MT 59601

**Re: Comments on the Long Range Guidance Plan and Tributary Prioritization Plan for the Upper Clark Fork River Basin (UCFRB)**

Dear Carol:

This letter details comments by the George Grant Chapter of Trout Unlimited (GGTU) regarding the *Conceptual Framework for an Upper Clark Fork River Basin Restoration Priorities Road Map* that is currently out for public comment. GGTU has been an active conservation organization representing the protection and restoration of fisheries and public access on behalf of a membership of over 300 residents in Southwest Montana for over 30 years. The Upper Clark Fork River has been a priority of GGTU for restoration work for many years; as a result, we consider our organization to be a major stakeholder in the restoration process and we plan to be very active throughout this process.

First off, I would like to commend the NRDP staff for their management of the UCFRB Restoration Fund to date, and we realize that a tremendous amount of work has been spent drafting the latest version of the Long Range Guidance Plan. We also would like to recognize the effort by Montana Fish Wildlife and Parks in developing the Aquatic and Terrestrial Tributary Prioritization Plans. GGTU has listed comments specific to each plan. It is important that a guidance document be in place to ensure that restoration priorities are met.

Long Range Guidance Plan

GGTU believes that this revised version of the restoration "Roadmap" is an improvement over the original version released in 2008, and we support the majority of the document as written. Specific areas where GGTU does not agree with the roadmap are as follows:

- The unexpended funds remaining from the SSTOU Remediation fund should be reserved for habitat and restoration projects within the Silver Bow Creek (SBC) watershed, including the mainstem and major tributaries (German Gulch, Warm Springs Creek, Mill Creek, Willow Creek, Blacktail Creek, Browns Gulch Creek, Basin Creek). These funds were allocated for Silver Bow Creek cleanup, and should remain in the watershed for that purpose, with an emphasis on aquatic restoration projects.

GGTU feels that the upper reaches of the basin are not receiving an appropriate amount of restoration funding proportional to the magnitude of damage incurred. The remedy work completed has improved the condition of Silver Bow Creek a great deal, but there are still tremendous strides needed to restore a viable fishery in the watershed. Contamination is still impacting the creek through contaminated storm water discharges, wastewater effluent, and ground water; and tributaries are impacted from mining, agriculture, and other sources, and their fisheries are marginal, at best.

The NRDP spent significant resources on the Silver Bow Creek Watershed Restoration Plan, which identified over 60 restoration needs within the watershed. Some of these priorities have been or are in the process of being addressed through previous grants, but there are dozens of needs left unaddressed that are identified as priority projects. Project should be selected based on priorities outlined in this plan, as well as other issues identified since the plan was completed. GGTU also adamantly opposes that any unexpended funds be spent on infrastructure for affected communities, since there are other portions of the settlement that address those issues. Although GGTU feels that there are restoration priorities far in excess of what available funding may be left from the SBC remedy, if there reaches a point where all major restoration needs in the Silver Bow Creek Watershed have been met with these funds, then it would be appropriate to consider these funds for projects throughout the UCFR basin. GGTU also recommends that a similar approach be taken with any unexpended Clark Fork River remedy funds.

- The funding priorities for recreational projects are too restrictive and should be re-evaluated. Although GGTU recognizes that there should be some limitations on recreational projects that constitute large land acquisitions that may not be the best use of funds; however, recreational projects, especially in the upper basin, should be eligible for funding. As GGTU understands this statement, the recent Fish Pond Proposal approved by NRD would not have been eligible for funding under these proposed rules. GGTU was a strong proponent of this project and strongly believes that similar-type projects should be eligible for funding. NRD needs to clarify this statement.

#### Tributary Prioritization Plans

The tributary prioritization plans were prepared over the past 2 years with a significant amount of effort expended by FWP and NRDP staff. These plans in their current state may represent a good starting point for directing funding priorities; however, GGTU feels strongly that as written these plans are not complete and much more work and discussion should be conducted before adopting them as final plans. As an example, the aquatic plan has dozens of streams that have not yet been prioritized. Also, GGTU would like to see more discussion on how the prioritization process was conducted, as it appears that some tributaries in the upper end of the UCFRB (Silver Bow Creek

and Reach A) are lower priority than expected. An example would be Blacktail Creek, which is a Priority 3 classification under the current plan. Blacktail Creek makes up the headwaters of the Silver Bow Creek, has an existing fishery, and this fishery includes native species, which should warrant a higher ranking. Also, Browns Gulch Creek, an important upper tributary with native fish population, has not yet been prioritized. GGTU asks for more discussion on these topics and for the aquatic tributary plan to be updated and more complete. Finally, there needs to be some recognition and consideration that additional funds may need to be spent on the Silver Bow Creek mainstem in order to restore a viable fishery.

Regarding the terrestrial prioritization plan, GGTU's only comment is that it appears that the upper basin has been given adequate priority. As depicted in Figure 3, the terrestrial injured areas are all located upstream of Deer Lodge; however, it appears that the majority of terrestrial priorities are well outside of these areas. GGTU thinks these priorities should be re-evaluated.

A final comment regarding both tributary plans is they a.) do not include specific project recommendations, and b) do not include any detail on how implementation of projects will be conducted. It is critical that a significant amount of decision-making be made at the local and regional level, as opposed to managing the projects from outside the UCFRB. GGTU strongly supports the hiring of additional staff within the basin to work with local stakeholders in the development of restoration projects. Non-governmental organizations such as GGTU are keenly interested in being involved in this process; however, our ability to develop and manage large restoration projects is limited due to lack of paid staff. NRD and/or FWP needs to provide local staff within the basin to assist with the project development and implementation efforts.

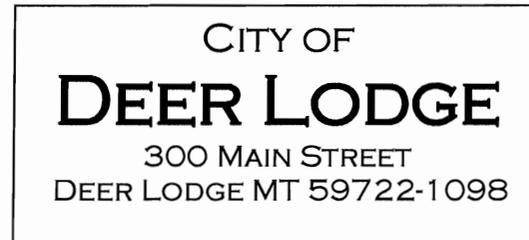
GGTU appreciates the opportunity to comment on these documents. Please keep us informed on any activities related to these issues and others in the UCFR basin. As a local representative of fisheries improvement in the basin, we would like to be involved in the restoration planning to the extent possible.

Please pass this letter on to the Citizen's Advisory Board and Trustee Restoration Council on our behalf. Thank you for the opportunity to provide comments on these critical plans.

Sincerely,

George Grant Chapter of Trout Unlimited  
Bob Olson - President

November 30, 2010



Bill Rossbach, Chair  
Upper Clark Fork River Basin Remediation and Restoration Advisory Council  
Natural Resource Damage Program (NRDP)  
P.O. Box 201425  
Helena, MT 59620-1425

**Re: Comments on Long Range Restoration Priorities and Fund Allocation  
Guidance Plan**

Chairman Rossbach and honorable members of the Advisory Council:

On behalf of the City of Deer Lodge I want to thank you and the NRDP staff for the work you have done in developing the *Guidance Plan* and for this opportunity to provide comments. I would like to applaud your efforts in developing the *Guidance Plan* and the idea of a new and more progressive program for finding and funding projects.

Our concern is for the upcoming 2011 funding cycle. Deer Lodge has a project planned, designed and engineered that will **produce immediate and immense benefit** to the Clark Fork River. We submitted our Pre-application in a meeting with NRDP Staff in July 2010. Our hope was to submit a full application during the 2011 grant application cycle that usually occurs in the spring. At that time there had not been any discussion of changes to the NRDP Grant Process. Deer Lodge has been vigilant in our planning efforts for our project but at this time have no knowledge of what to expect from the NRDP Grants Program. **We ask respectfully that there are considerations made for projects like ours that were to submit a funding application in 2011.** This is a project that we feel so strongly about. The City of Deer Lodge has never before sought NRDP funding. We understand the importance of choosing projects with the most benefit to the natural resources that have been damaged.

Also, it has come to our attention that the *Guidance Plan* does not specifically address the eligibility of the main stem of the Clark Fork River for funding through this program. **The City of Deer Lodge feels that it is crucial for the main stem of the Clark Fork River to be eligible for funding.**

The "Aquatic and terrestrial restoration funding process" section of the *Guidance Plan* states that "funding decisions should be determined and guided by two documents: the Tributary Prioritization Plan and the Terrestrial Wildlife Resource Prioritization Plan. Under this wording the Clark Fork River would not be eligible for funding.

The Tributary Prioritization is a fine document. Deer Lodge would like to thank NRDP and Montana Fish, Wildlife and Parks for its development. It provides a solid framework for a plan to improve tributaries to the Clark Fork River. It should be used to determine priorities for funding aquatic restoration projects. However, **the Clark Fork should receive a higher level of priority for funding.** The areas of the Clark Fork most damaged through past mining activities should be given priority above any of the river's tributaries. The section of river from Warm Springs to Deer Lodge is the most contaminated, followed by Deer Lodge to Garrison, then Garrison to Drummond. Giving these areas priority makes sense and is the right thing to do. Without providing funding for projects that improve the health of the Clark Fork in these areas the basin and its tributaries will never reach their full potential.

I want to thank you for your time and hard work in serving on the Advisory Council and in producing the **Long Range Restoration Priorities and Fund Allocation Guidance Plan.**

Sincerely,

*MaryAnn Fraley*

Mary Ann Fraley, Mayor  
City of Deer Lodge



Lands Program Manager  
8550 Saint Vrain  
Missoula, MT 59808  
Phone (406) 493-6630  
mmueller@rmeef.org  
www.rmeef.org

November 30, 2010

Bill Rossbach, Chair  
Upper Clark Fork Citizen's Advisory Council  
PO Box 201425  
Helena, MT 39620-1425

Vivian Hammill, Chair  
Upper Clark Fork Trustee Restoration  
Council  
PO Box 201425  
Helena, MT 39620-1425

Dear Chairperson Rossbach and Hammill,

The Rocky Mountain Elk Foundation has reviewed the Long Range Restoration Priorities and Fund Allocation Guidance Plan and would like to offer our support and encouragement to go forward with approving the proposed Long Range Restoration Priorities and Fund Allocation Guidance Plan. The plan will guide decisions in the future and help prioritize where limited funding should be used to restore the damage to our land, water, fish and wildlife caused by the historic mining and smelting in the Upper Clark Fork.

I have reviewed the UCFRB Terrestrial Wildlife Resource Prioritization Plan and UCFRB Tributary Prioritization Plan and feel they will adequately guide future decisions on funding wildlife and fisheries restoration projects. The plans are based on sound science and provide good scientific information, maps and criteria to base future funding decisions on.

The RMEF looks forward to working with private landowners and other partners in the Upper Clark Fork River Basin and developing important projects to restore and replace wildlife and fisheries resources and provide public recreation. The proportion of funding allocated to each of these areas seems to be appropriate. This acceptance of this plan is crucial toward improving and maintaining hunting and fishing opportunities in the Upper Clark Fork region.

Thank you for your consideration and opportunity to provide these comments and we look forward to working with you in the future.

Sincerely,  
*Mike Mueller*  
Mike Mueller  
Lands Program Manager

CC: Blake Henning, VP RMEF Lands and Conservation Department



November 26, 2010

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

**RECEIVED**

NOV 30 2010

NATURAL RESOURCE  
DAMAGE PROGRAM

Comments on Draft Terrestrial and Tributary Prioritization Plans

Dear Tom,

Thanks for the opportunity to comment on the Draft Tributary and Terrestrial Prioritization Plans for the Upper Clark Fork Basin.

We appreciate the effort and expense that the State has put into these plans. Now that the State's Natural Resource Damage litigation against Arco has been settled, it is appropriate to evaluate priorities for the Restoration Fund. The tributary and terrestrial prioritization documents prepared by FWP are appropriate science-based guidance references for use in establishing a more detailed restoration plan for the watershed, and for evaluating projects. As more detailed restoration planning moves forward, we suggest that the state continue to consider and evaluate new information to shape and refine prioritization efforts.

The Tributary plan includes a provision for ongoing monitoring. This is wise to ensure that restoration dollars are well spent, and to allow modifications to the plan as new information becomes available.

Our most significant concern regarding these two plans is the lack of evaluation of priorities for the Clark Fork main stem and associated riparian and wetland habitats. The tributary prioritization focuses on Clark Fork tributaries. The terrestrial prioritization plan rates riparian and wetland areas as priority 1 for terrestrial habitat, but not for aquatic resources. Restoration of the Upper Clark Fork River main stem and its riparian areas should receive restoration priority for both aquatic and terrestrial resources. The success of restoring the main stem river and its fishery, naturally, is highly dependant on the successful restoration and protection of its tributaries. And the success of restoring any peripheral component (e.g. tributary) depends highly upon the integrity of the River itself.

We believe that restoration of riparian and wetland habitats along the river's main stem should be a top priority for the program. A portion of the river, in the Deer Lodge Valley, will benefit from coordinated remediation and restoration, but the river downstream of Garrison will not. Valuable restoration opportunities exist along the main stem Clark Fork. The river between Garrison and the confluence of Rock Creek contains very degraded riparian habitat and very low fish populations. The section between Rock Creek and the Milltown restoration area also is

degraded, although fish populations here are better than those upstream. The condition of the river upstream of the confluence with Rock Creek is indicated, in part, by the very low fish populations found in this reach – the lowest along the river from Warm Springs Ponds to Rock Creek. The causes of the degradation are many, including mining, highway and railroad construction, channelization, grazing, rip rapping and riparian vegetation removal.

Since the Milltown Dam has been removed, native fish movement into the Upper Clark Fork River is likely to increase significantly in the future. Riparian and wetland habitat protection and restoration along the main stem Clark Fork will help ensure successful recovery of bull trout and cutthroat trout in the Upper River.

Very significant restoration opportunities exist along the Clark Fork main stem between Garrison and the Milltown project area. Some restoration projects could be achieved with relatively low cost and high benefits, including projects aimed at improving grazing and vegetation management practices, fencing and off stream watering. Other more expensive options could include restoration of rip rapped stream banks, removal of hard armoring and restoration of riparian vegetation. More ambitious projects could include efforts to reconnect the meanders that have been cut off by highway and railroad construction, and to restore floodplain connection where it has been lost. Such projects should receive consideration as part of a basin wide restoration plan for the river.

Main stem restoration may include necessary work to complete restoration near the confluence of the Clark Fork and the Blackfoot rivers. The Clark Fork and lower Blackfoot Rivers were injured by mining, and restoration of riparian resources along these streams should continue to be a priority for the Restoration program. Additional funds may be required to complete the ongoing restoration work along the Clark Fork in the restoration project area of the former reservoir. The restoration work completed so far will be vulnerable to damage for several years, and work may be needed to repair damage caused by flooding or ice scouring in the project area. In addition, the Blackfoot River arm of the former Milltown Reservoir will need work to stabilize and re-shape steep and eroding banks, restore vegetation, control weeds and clean up debris. The State has begun this important work on the lower Blackfoot, and its completion should be a priority.

We support the recommendation in the terrestrial prioritization plan proposes that all riparian, wetland and aspen communities in the basin be considered a Priority one, and a high priority for restoration, land acquisition, conservation easement or lease-agreements. The Clark Fork River corridor includes riparian lands in a variety of land ownerships, all of which offer important habitat to regional fish and wildlife populations and opportunities for restoration or protection. All riparian and wetland communities in the watershed should be viewed as a high priority for aquatic resource as well as terrestrial resource protection and restoration.

Because of the many resource benefits provided by riparian and wetland areas, these areas should be among the very highest priorities for protection and restoration in the Upper Clark Fork Basin. Riparian areas and wetlands perform a variety of important environmental services, including fish and wildlife habitat, protection of water quality, and stream bank stability. One of the most valuable functions of wetlands and naturally vegetated riparian areas is their ability to maintain and improve water quality. This provides substantial benefits for aquatic resources. The role of naturally vegetated riparian areas in benefiting water quality is well documented. These

vegetated areas adjacent to streams trap and attenuate sediment and surface water pollutants such as pesticides, hydrocarbons, and bacteria. In addition, they provide shade to maintain cool water temperatures for aquatic life. Naturally vegetated riparian areas also reduce the excess nitrogen and phosphorus in groundwater from sewage and agriculture. Riparian and wetland habitats mitigate damage from metals and acidity caused by mine wastes. Healthy wild trout fisheries are dependant upon quality habitat and connectivity of habitat. Healthy streams and riparian areas are also essential for terrestrial wildlife and birds. Over half of Montana's wildlife species are known to depend upon these areas for some aspect of their survival, including feeding and hiding areas as well as links between wildlife habitats. Biologists have found that at least 196 of Montana's terrestrial wildlife species are "wetland obligates" which means they depend upon these areas for some part of their life cycles. Since wetland and riparian areas represent such a small proportion of our land area, approximately 4% of Montana's total land area, it is critical to maintain these habitats for the amphibians, reptiles, birds, and mammals that need them. For these reasons, riparian and wetland habitats should be the highest possible priorities for protection and restoration of aquatic and terrestrial resources in the Upper Clark Fork Basin.

The National Research Council of the National Academies of Science published a report in 2002, entitled *Riparian Areas: Functions and Strategies for Management*. The following quotes from the report are a very good description of the importance of riparian area protection and restoration:

**"Restoration of riparian functions along America's waterbodies should be a national goal.** Over the last several decades, federal and state programs have increasingly focused on the need for maintaining or improving water quality, ensuring the sustainability of fish and wildlife species, protecting wetlands, and reducing the impacts of flood events. Because riparian areas perform a disproportionate number of biological and physical functions on a unit area basis, their restoration can have a major influence on achieving the goals of the Clean Water Act, the Endangered Species Act, and flood damage control programs."

**"Protection should be the goal for riparian areas in the best ecological condition, while restoration is needed for degraded riparian areas.** Management of riparian areas should give first priority to protecting those areas in natural or nearly natural condition from future alterations. The restoration of altered or degraded areas could then be prioritized in terms of their relative potential value for providing environmental services and/or the cost effectiveness and likelihood that restoration efforts would succeed. Where degradation has occurred—as it has in many riparian areas throughout the United States—there are vast opportunities for restoring functioning to these areas."

**"Patience and persistence in riparian management is needed.** The current degraded status of many riparian areas throughout the country represents the cumulative, long-term effects of numerous, persistent, and often incremental impacts from a wide variety of land uses and human alterations. Substantial time (years to decades) will be required for improving and restoring the functions of many degraded riparian areas. Commensurate with restoration must be efforts to improve society's understanding of what riparian functions have been lost and what can be recovered. "

The other major factor that the State should consider in prioritizing areas for aquatic restoration is stream flow. Some of the best opportunities for restoration of aquatic habitat can be achieved simply by providing adequate flows to support aquatic life. Many tributaries in the Upper Clark

Fork watershed are chronically dewatered, and restoring streamflow in these tributaries will provide direct benefits to aquatic life.

Further analysis of tributaries and main stem reaches should be conducted in preparation of a basin wide restoration plan for aquatic resources. This analysis should consider the opportunities for both stream flow restoration and riparian resource protection or restoration, and the likelihood of success and cost effectiveness of those efforts in each area. Priorities for future work should then be based on this assessment.

With regards to the restoration of fisheries described in the Aquatic Prioritization Plan, we recognize the value of improving fish habitat throughout the basin but we would prefer to see preference given to projects that enhance native fisheries, over those that enhance non-native sport fisheries. Native fisheries have been affected throughout the entire Clark Fork River Basin by industrial development. Abundant native fisheries are key indicators of healthy streams and rivers. We hope that long-range planning will focus on improving long term viability of native fisheries in order to attain maximum benefits to the Upper Clark Fork Basin. Native fish populations in the Upper Clark Fork will likely increase following removal of the Milltown and Bonner Dams. Fish movement into the Upper Basin may change over time as populations increase. Projects that restore connectivity of the main stem to tributary spawning habitat may become increasingly important as bull trout and cutthroat trout populations increase in the Upper River. Spawning habitat use by these species should be monitored over time as part of this plan's monitoring program, and adjustments made to priorities based on new information as it becomes available.

We recognize that the greatest injury to resources has occurred in the upper part of the Clark Fork River Basin. But we encourage the restoration program to also consider the value of enhancing high quality fish habitat in the lower part of the basin and the contribution to the larger restoration goals of the Upper Clark Fork fishery that this could provide. Tributaries such as Deer Creek and Crystal Creek may receive increased movement of native fish following removal of the Milltown Dam. Further upstream, Cramer Creek may provide suitable habitat and could provide habitat for native fish. These streams are worthy of consideration for projects that would remove fish passage barriers or improve habitat.

Thank you again for taking on this important prioritization effort, and for the opportunity to provide comments.

Sincerely,

A handwritten signature in black ink that reads "Peter Nielsen". The signature is written in a cursive, slightly slanted style.

Peter Nielsen  
Environmental Health Supervisor



Butte Restoration Alliance

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

RECEIVED

NOV 30 2010

NATURAL RESOURCE  
DAMAGE PROGRAM

To: Advisory Council Members  
Trustee Council Members  
Staff Members

Please accept the following comments from the **Butte Restoration Alliance (BRA)** on the Natural Resource Damage Program's Draft Final Prioritization of Tributaries in the Upper Clark Fork River Basin for Fishery Enhancement and Draft Final Upper Clark Fork River Basin Terrestrial Prioritization.

The Butte Restoration Alliance (BRA) is a citizens' advisory group that was formed to provide input and prioritization for the restoration and redevelopment of Butte. We have listed our comments and concerns below and request they be considered before finalizing each of the plans.

Although we concur with the broad concept of following priorities set by FWP to guide future spending decisions, we cannot agree that the two documents presented thus far are by themselves adequate to guide such decisions. We feel strongly that the two FWP prioritization plans are too narrowly focused and that instead, a much broader, watershed-based approach needs to be considered for funding decisions. The injuries identified by the State of Montana for restoration are very broad and more closely represent watershed damage than the limited injuries addressed in the proposed FWP plans. The natural resources which the State considers injured include fish, wildlife, surface water, groundwater, soil, and vegetation. Injuries also include the amenities provided by soils, vegetation, wildlife habitat, and wildlife hunting, bird watching, wildlife photography, hiking, fishing, floating, and general recreation.

The Terrestrial Prioritization Plan develops a broad background of "restoration or replacement of terrestrial wildlife resources," including both riparian and wetlands, but focuses on replacing injured elk and other big game resources. Riparian and wetland habits were well identified as "extremely important" but the connections between floodplain corridors, wetland habitats, riparian habitats and main stem aquatic habitats, was not developed. The figures appear to indicate that the Butte area has no injured terrestrial wildlife resources, but in fact the Butte area has many watersheds that include riparian areas and wetlands that are severely injured, and these areas should be given higher priority for restoration. Wildlife corridors and protection of habitat adjacent to National Forest lands should also be considered for the Butte urban area. While some of these areas may be small (less than 10,000 acres); they are critical to protect and be used as replacement of lost wildlife habitat as these lower elevation areas, most of which are privately owned, are being subdivided. This could cause management issues between

potential subdivision landowners and wildlife similar to what other communities such as Missoula and Helena area experiencing.

Although non-game animals are included in the document's background sections, non-game animals are not included in the prioritization process, and should be considered as a major part of any terrestrial resources restoration effort. We recommend that FWP consult the local wildlife biologist in the Silver Bow Creek watershed (SBC), Vanna Boccadori, in the terrestrial prioritization process and that she be asked to evaluate the SBC watershed with respect to all species, habitat, migration, and not exclusively large game.

The Aquatic Prioritization Plan is an excellent document for trout fishery enhancement throughout the Upper Clark Fork River Basin. However, the prioritization methodology is focused only on the "current fishery," and any proposed future fishery that is produced by the intense restoration of highly injured areas received low tributary prioritization ratings. Also, the document does not include the basic aquatic aspects of habitat restoration and non-game species enhancement were not an element of the process. These must be considered as a major part of any aquatic resources restoration effort. The plan should address all aquatic species, sediment concentrations, sediment budgets and dissolved oxygen levels in gravels and their impacts on the general health of aquatic systems.

The two new FWP plans, along with the Silver Bow Creek Watershed Plan, need to be considered together to create a more comprehensive prioritization of the SBC and CFR watersheds. We request that the NRDP recognize the Silver Bow Creek Watershed Restoration Plan (2005) as an equally important planning document for prioritizing spending. One of the most valuable elements of this document is its careful identification of data gaps that need to be filled as part of a comprehensive restoration effort as well as the extensive public participation process that took place to educate and gather feedback on watershed priorities. Additional work is needed to prioritize the best plans for aquatic and terrestrial restoration in the watershed.

The BRA planned to address many of these concerns to FWD staff at our last meeting which was scheduled to include presentations by FWP staff on the Terrestrial Plan and the Tributary Plan. Unfortunately, the speakers cancelled due to poor weather conditions. Because these issues we have mentioned have far-reaching effects on the ultimate effectiveness of restoration efforts, we recommend that no funding of aquatic and terrestrial projects is allowed until a more thorough, total watershed approach is completed and included in the priority lists.

Thank you for considering of our comments and we look forward to discussing them with you.

Regards,

*Suzzann Nordwick*

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Butte Restoration Alliance, co-chair

Gary Matson  
Box 308  
Milltown MT 59851

22 November 2010

Ms. Vivian Hammill  
Chair, Trustee Restoration Council  
PO Box 200801  
Helena MT 59620-0801

Dear Ms. Hammill,

I appreciate this opportunity to offer comment regarding three documents, the "Long Range Restoration Priorities and Fund Allocation Guidance Plan," and the related UCFRB terrestrial and tributaries prioritizations.

I have been interested in the Clark Fork River remediation and restoration from the 1990's, when these activities were first proposed. Most recently, I have served as a member of the Milltown Superfund Site Redevelopment Working Group.

I strongly support the Guidance Plan proposed by the Advisory Council. The Plan will enable the focusing of restoration resources upon practices and projects that will best guide restoration as intended in the Natural Resource Damage Litigation. Without the guidance that the Plan will provide, there is a real risk that funds will be expended in a less well-directed way on projects of less benefit to restoration. The NRDP staff must have the authority to guide projects towards their best use, as stated in the Plan.

The terrestrial and tributaries prioritizations are sound, science-based reference documents. Although biological and environmental variations will necessitate their review from time to time, they provide the NRDP with sound references for moving ahead with restoration.

Sincerely,



Gary Matson

**From:** Tony Herbert [therbert@bresnan.net]  
**Sent:** Tuesday, November 23, 2010 8:29 AM  
**To:** Natural Resource Damage Program  
**Subject:** Long Range Guidance Plan for the Clark Fork Basin

Thank you for the opportunity to comment on your plan. As past president of the Pat Barnes Missouri River Chapter of Trout Unlimited I have followed your progress during these past years. Our chapter has provided comments regarding the Little Blackfoot River through our conservation chairman, John Wilson. I fully support our Conservation Committee's comments, which follows:

Though our name does not imply it, PBMRTU has long considered the Little Blackfoot watershed as an important and popular trout fishery within our sphere of influence. In the past we have actively participated in both stream rehabilitation and fisheries research projects in the Little Blackfoot watershed. We welcome the opportunity to provide comments on the Draft Final Prioritization of Tributaries in Upper Clark Fork River Basin for Fishery Enhancement.

We think that undertaking the "Prioritization" is smart fishery resource management that will guide allocation of financial resources and collaborative efforts ultimately resulting in an enhanced, revitalized and protected trout fisheries resource. As outlined in the draft, it's a good idea that we support and wish to join the collaborative process.

We generally agree with the three trout fisheries prioritization goals in the draft and the resultant selection of streams and stream reaches most likely to contribute to attaining those goals.

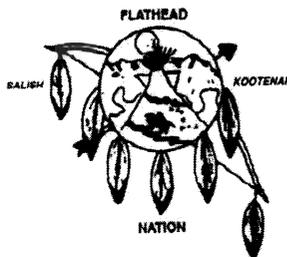
It is clear from reading the draft that the efforts are targeted at trout populations, habitats and enhancements. That is good. We think it is important to clearly emphasize "wild" trout and natural propagation and recruitment. We think this is what you have in mind, and perhaps obvious to you, but your overall direction will be greatly clarified by referring to trout as "wild" and not hatchery raised.

We strongly support the maintenance and/or improvement of native trout populations (bull trout and westslope cutthroats) not just to preserve the gene pool but additionally because these trout are adapted to these environs through many generations. They are our best bet. Yet, it is important to recognize the value of brown and rainbow trout as part of the recreational fishery. Given hybridization and predation risks it is a difficult balance to strike with native fish. We regrettably do not think brown and rainbow trout can or should be removed from the Upper Clark Fork. Frankly they provide some of the better fishing for anglers. Your prioritization would be perhaps clearer if you outlined how you are going to protect native fish (which we support) while maintaining the popular brown and rainbow trout fishery. A tough problem, we urge balance.

Despite the draft not being a comprehensive assessment for each watershed, particularly identifying "limiting factors", we believe based upon our experience your professional judgment is close to being spot on. We are comfortable with the expression of this judgment in the draft. However we are concerned that while the draft is clear in its resolve toward habitat enhancement it does not specifically mention correction and enhancement of flow "limiting factors". In our judgment flow enhancement, particularly at identified times of the year (See Dave Ames research) are a critical priority element not only in enhancement of the Little Blackfoot trout fishery, but flow benefits domino downstream throughout the whole Upper Clark Fork and all of the identified reaches. We also know that flow issues are difficult to resolve. We urge you to creatively and directly address flow enhancement issues.

The saying goes "they aren't making any new trout streams". Your thoughtful and strategic prioritization of the Little Blackfoot River and its tributaries will outdate that statement and rejuvenate a trout fishery for future generations. We commend you and offer our assistance.

Thank you for the opportunity to comment.



THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD NATION

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

TRIBAL COUNCIL MEMBERS:  
E.T. "Bud" Moran – Chairman  
Joe Durglo – Vice Chair  
Steve Lozar – Secretary  
Jim Malatare – Treasurer  
Michel Kenmille  
Carole Lankford  
Reuben A. Mathias  
Charles L. Morigeau  
Terry L. Pitts  
James Steele Jr.

November 30, 2010

Carol Fox, Restoration Chief  
Natural Resources Damages Program  
1301 East Lockey  
P.O. Box 201425  
Helena, MT 59620-1425  
Email: cfox@mt.gov

Dear Ms. Fox:

This letter transmits the Confederated Salish and Kootenai Tribes (Tribes) comments on the following three issues:

1. 2010 Draft Upper Clark Fork River Basin (UCFRB) Restoration Work Plan
2. Resolution by the UCFRB 2010 Advisory Council for Adoption of a Long Range Restoration Priorities and Fund Allocation Guidance Plan
3. Prioritization of Tributaries in the UCFRB For Fishery Enhancement (May 2010).

These comments are provided pursuant to the *Memorandum of Agreement among the State of Montana, Confederated Salish and Kootenai Tribes and United States Department of Interior Regarding Restoration, Replacement or Acquisition of Natural Resources in the Clark Fork River Basin*. These comments are not exhaustive but highlight selected issues.

(1) 2010 Draft UCFRB Restoration Work Plan

In 2009 the Tribes initiated discussions with the NRDP regarding the need for the parties to jointly review NRDP's procedures for project implementation and meeting the provisions of the MOA concerning protection of Tribal Cultural Resources/Tribal Religious Sites (Section IV (7) (a)) and protection of undiscovered /undocumented cultural resources (Section IV (7) (c)). The CSKT submitted comments to the NRDP many months ago. We understand that the NRDP is quite busy but the status of the joint discussion and the Tribes' recommendations are unclear. We request that steps be taken to conclude the joint review prior to NRDP awarding grants for the 2010 workplan.

## (2) Long Range Restoration Priorities and Fund Allocation Guidance Plan

We have actively participated in the planning with the goal of ensuring as best as possible, that the Restoration Fund is expended pursuant to the letter and spirit of the original lawsuit (Montana v. ARCO, to which the CSKT intervened) and the letter and spirit of the Consent Decree that settled that case (and to which the CSKT are signatories).

The CSKT has actively engaged with the Advisory Council to produce and promote the Long Range Plan that is currently out for public comment. As a strictly legal matter we agree with some arguments presented that expenditures from the Restoration Fund are unsupported without a clear, comprehensive plan for the Fund.

As a practical matter, the CSKT understand and support the importance of a joint vision for expenditures from the fund. With that in mind, the CSKT here incorporate by reference our previous comments on the record to the AC and TC.

The current Plan reflects the Tribes' most important priorities and goals for the Clark Fork River. These focus on the letter and intent of the Consent Decree, water quality and fisheries. These are consistent with the CSKT's Treaty interests and resource/stewardship goals. The plan establishes the following funding guidelines for aquatic resources:

- Allocates 39% of the UCFRB Restoration Fund for priority aquatic resources.
- Allocates leftover Silver Bow Creek remediation funds to aquatic restoration at the Silver Bow Creek, Butte Area One and Clark Fork River operable units.

We believe the plan is consistent with Tribal goals and policies but in signing the document it is acknowledged as including compromises, most notably towards groundwater resources, which have largely been in the Butte/Anaconda domain and towards the political, legal, and social realities necessary to establish consensus (or at least a majority vote) a good chance of approval by the Trustees and Governor.

## (3) Prioritization of Tributaries in the UCFRB For Fishery Enhancement

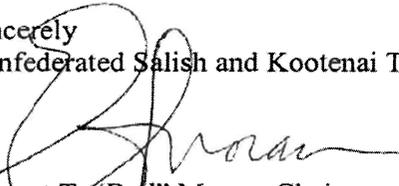
The CSKT believe that the native fish species particularly bull trout should be given full consideration for UCFRB fishery restoration and enhancement.

We are very concerned by the NRDP's and FWP's decision to "de-emphasize" the native fishery goal (goal #3) for the UCFRB. To remove native species as an emphasis compromises the ability to recreate some of the most important elements of what was damaged by mining. Native species are critical to recreating the past and restoring its ecological, cultural, and economic vitality.

To resolve this issue we request a meeting between the Tribal, Federal and State fishery trustees regarding how to integrate UCFRB restoration with native species and bull trout recovery ongoing in the Clark Fork River Basin.

Thank you for your continued commitment to restoring the injured natural resources of the Upper Clark Fork River Basin as well as your continuing commitment to the Memorandum of Agreement. Please continue to coordinate with Mary Price, Legal Department Staff Scientist and Stu Levit, Legal Department Staff Attorney regarding the issues identified in these comments.

Sincerely  
Confederated Salish and Kootenai Tribes



Ernest T. "Bud" Moran, Chairman  
Tribal Council

**Comments by Kristin Snyder Douglass**  
**on**  
**Terrestrial Restoration Doc, and Trib Restoration Doc**

- 1) I am concerned **the Terrestrial Plan nor the Tributary Plan address the area near and around Butte Area One.** In looking at the Silver Bow Creek Restoration Plan (2005) map on page 4, the brown “Planning Area Boundary” includes Basin Creek, Blacktail Creek and Brown’s Gulch watersheds and includes most of Timber Butte. I think that these areas should be considered as High Priority Areas for Terrestrial Restoration and Tributary Restoration. **There are many acres of functioning habitat that are very close to the major source of the injury, the mining activity on the Butte Hill.**

I realize that the Rock Creek Area that has been designated High Priority is lovely, pristine and highly valuable in terms of wildlife and as a large ‘patch’ of continuous functioning ecosystem. And the upper reaches of Blackfoot Creek are also lovely. **But I think areas of functioning habitat closer to the injury should be given a much higher priority.** These tributaries (Brown’s Gulch, Blacktail, Basin and Sand Creeks), grass, shrub-steppe and forest patches have functional and highly desirable wildlife populations. Restoration efforts in the Butte Area will significantly stabilize this area at the Headwaters of Silver Bow Creek/Clark’s Fork River.

- 2) I strongly support the concept of replacement as part of the settlement, but I also feel strongly that the replacement areas should be closer to the injured sites and that replacement projects should not be the only solution.

**Coleman, Kathleen**

---

**From:** Kristin Snyder Douglass [samjd@montana.com]  
**Sent:** Monday, November 22, 2010 3:22 PM  
**To:** Natural Resource Damage Program  
**Cc:** Cunneen, Padraig  
**Subject:** Guidance comments  
**Attachments:** Guideline Comments 10 nov 10.doc

Dear NRDP Staff,

Attached are my comments to the Guidance doc and briefly, the Terrestrial and Aquatic docs. I apologize for some obvious confusion. The relation between Superfund and the Law-suit, Remedy and Restoration, is still unclear to me. However, I hope that Restoration will be able to address weaknesses in the final Remedy.

Remedy so far in Butte has been awesome, is awesome. The Butte Hill is not the same place it was 25 years ago. We who live here are very, very lucky for the clean-up as it has proceeded. But now that it has come so far, we are a bit desperate for the final word on Remedy.

Respectfully,

Kriss Douglass



## **BUTTE-SILVER BOW**

Office of Council of Commissioners

Courthouse

Butte, Montana 59701

November 30, 2010

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

**Re: Butte-Silver Bow Comments on the  
NRD Advisory Council's Restoration Priorities Draft Guidance Plan  
for the Upper Clark Fork River Basin**

Dear Ms. Hammill:

At our meeting of November 23, the Butte-Silver Bow Council of Commissioners voted unanimously to submit the following comments on the NRD Advisory Council's Draft Guidance Plan (Plan), as released in September 2010.

In general, Butte-Silver Bow continues to believe that a long-term plan is needed to guide restoration priorities. Toward that end, we think this latest effort by the Advisory Council provides a good framework. We support several of the Plan recommendations as presented and likely a few other provisions, after some clarifications. However, we believe the draft Plan needs certain refinements to warrant our full support and to ensure the priorities are equitable to our community.

As we have expressed many times in the past 12 years, we believe the headwaters of the Upper Clark Fork River Basin, including the 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. Although the draft Plan emphasizes this fundamental priority in the "Whereas" recitals, it appears to us that certain recommendations in the Plan may not direct the investments accordingly.

We present and ask for consideration of the following comments and revisions:

- 1) The draft Plan recommends that any "SSTOU Remediation Fund Remainders" should be allocated for projects throughout the Basin. Instead, we believe these funds should be allocated for projects wholly within the Silver Bow Creek

watershed, above the confluence of the Warm Springs Ponds and Warm Springs Creek. These funds should be prioritized for the following purposes:

- a) Completing the remedial action, including any repairs or improvements needed on certain sections that do not meet performance standards, and the creation of a sufficient trust for long-term operation, maintenance and monitoring of the remedy;
- b) Implementing other aquatic and terrestrial restoration projects, as outlined in the 2005 Silver Bow Creek Watershed Restoration Plan (which was developed with widespread and substantial public involvement), and other restoration priorities within the watershed that emerge as the remedy is completed in the next few years; already there are a number of fisheries/habitat projects on the drawing board, e.g., in the Blacktail Creek floodplain, in the German Gulch and Browns Gulch drainages, a kids fishing pond in the Watershed, etc., that are or would be prime candidates for these "unexpended" funds that were originally (and should remain) earmarked for improvements in the headwaters of the Basin as part of the Silver Bow Creek remedy;
- c) Complete the restoration of Silver Bow Creek by providing sufficient resources (up to an additional \$8 million with the appropriate expenditure schedule and contingency) to fully and comprehensively 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, all as provided in the Record of Decision (RD) and Consent Decree (CD) for the Streamside Tailings Operable Unit (SSTOU). We would note however that the Greenway project cannot wait until 2013 for the additional allocation; in that regard we request a direct set-aside for the funds so that integration is maximized. But, ultimately, these dollars could come from the "SSTOU Remediation Fund Reminders."

We believe that this investment strategy for Silver Bow Creek would essentially be 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.

- 2) Regarding the recommendation to suspend funding of the Clark Fork Watershed Education Program in five years: This Basin-wide education program is critical

to establishing stewardship of the restored landscape by future generations. With millions of dollars committed to restoration, our only hope to enhance and maintain these investments lies in the thoughtful education of future generations of Montanans. We would encourage that the Plan fund this program for twenty years, with appropriate evaluations to assure that the program meets a long-range plan for educational activities.

- 3) Regarding the recommendation on limiting the use of restoration funds for recreational projects: It is unclear whether this limitation will eliminate or restrict eligibility of projects in the headwaters area; for example, it has been stated that the current "recreational projects" in Butte to build a fish pond and improve pedestrian trails in natural areas along the East Ridge would not be eligible for funding if the draft Plan were adopted, as is. To that extent, Butte-Silver Bow cannot support this recommendation. While we understand the need to preserve funds for resource restoration, and that there is more work to do than there are funds to accomplish what should be done, it is still important to recognize that the replacement of lost recreational opportunities due to the impacts of mining is a major part of this lawsuit. Butte has suffered greatly from these mining impacts, and our community should be able to propose and implement projects that replace what has been lost.
  
- 4) Regarding the proposed percentages to allocate funds to "Priority Resources" and the relationship between these percentages to the yet-to-be-determined priority projects (i.e., the FWP prioritization plans):
  - a) Although we recognize the Advisory Council's reasoning (i.e., that the entire Basin has suffered damages and lost opportunities) in proposing the percentages presented in the Plan, we still believe that the percentages should be based on the values of the **original restoration claims** (i.e., 57% Groundwater, 26% aquatic, and 17% terrestrial), which would better reflect the location and severity of the damaged areas;
  
  - b) The proposed percentages in the Plan are more acceptable to Butte-Silver Bow, in light of the associated recommendation (which we strongly support) to direct the groundwater allocation directly to Butte and Anaconda, and streamline the process for the communities to use those funds to restore and re-build their drinking water systems;
  
  - c) We also support the recommendation of the Plan to reserve 15% of the trust fund for contingencies, and that the contingency fund is created from the aquatic and terrestrial priority allocations, and not the groundwater priority; we concur that there are a number of unknowns that could significantly alter current priorities and expectations; the contingency account reflects the reality that at least two consent decrees are not

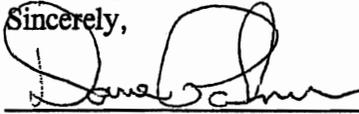
finalized, i.e., Butte Priority Soils and Anaconda Regional Water and Waste, which translates into considerable uncertainty in these two headwater communities;

- d) Our conditional support for the proposed percentages in the Plan is also linked to our request to ensure the allocation of the SSTOU remainders is directed to project priorities within the Silver Bow Creek watershed;
- 5) Regarding the two prioritization plans: We would ask for much more discussion and comment before these documents are “adopted” in any official way; there needs to be **better delineation of where projects would be pursued, how the prioritization process will actually work in terms of implementation; and who will make the decisions about implementation; we would also advocate for greater consideration of the content of the 2005 SBC Watershed Restoration Plan in the prioritization process. Please consider the comments from the Butte Restoration Alliance, the Citizen’s Technical Environmental Committee and other groups in the headwaters who we expect to submit more extensive comments on the FWP plans.**
- 6) The Plan does not appear to adequately address and preserve the need for decision-making at the local level; with the exception of the groundwater projects in Butte and Anaconda (with proposed streamlined process), it is unclear whether there will be a grant program (as we’ve come to know it) in the future, and whether local groups and communities in the Basin will still be eligible to design, develop and implement projects; we are concerned about increased centralization of project administration and decision-making by NRDP and FWP staff in Helena; our expectation for a long-term NRD plan, especially in the post-litigation phase of the program, has been more community control coupled with greater on-the-ground staffing in the Basin, e.g. a fish biologist living and working in the Basin to implement priorities, thus contributing to broader objectives to minimize administrative costs, maximize investments in projects and grow the restoration economy in the Upper Clark Fork River Basin.

In terms of process, we commend the NRD Advisory Council for their 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. We offer our comments and suggest refinements as part of the exchange of ideas and differing points of view.

Thank you for the opportunity to comment and we trust our input warrants your serious consideration. We look forward to collaborating with all stakeholders, Councils and Governor Schweitzer to refine a Plan that best serves the interests of all Basin stakeholders.

Sincerely,



Dave Palmer  
Dave Palmer, Chairman (District 12)  
Butte-Silver Bow Council of Commissioners  
Glen Granger, District 1  
Joseph E. Lee, District 2  
John Morgan, District 3  
Terry Schultz, District 4  
Dennis Henderson, District 5  
Wally Frasz, District 6  
Mark Moodry, District 7  
Ristine Hall, District 8  
Dan Foley, District 9  
Mike Sheehy, District 10  
Cindi Shaw, District 11



Paul D. Babb  
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Chief Executive

Cc: Dan Powers, Environmental Health Officer  
Dan Dennehy, Public Works Director  
Jon C. Sesso Planning Director  
Eileen Joyce, Butte-Silver Bow County Attorney  
Members, Butte Restoration Alliance  
Members, Greenway Authority Board  
Members, Citizens Technical Environmental Committee  
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