


# LIBBY ASBESTOS SETTLEMENT AGREEMENT

LASOC Meeting— March 9, 2023





# ROADMAP FOR TODAY'S MEETING

- BRIEF HISTORY OF THE BANKRUPTCY
  - OVERVIEW OF DEQ AND ITS ROLE IN ONGOING CERCLA REMEDIATION
  - GENERAL OUTLINE OF THE SETTLEMENT AGREEMENT
  - OVERVIEW OF REMEDY-FOCUSED PORTION OF SETTLEMENT AGREEMENT
  - OVERVIEW OF NRDP'S MISSION AND ROLE
  - OVERVIEW OF RESTORATION-FOCUSED PORTION OF THE SETTLEMENT AGREEMENT
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# OVERVIEW OF DEQ'S ROLE IN THE CERCLA REMEDIATION

- DEQ is engaged in a consultative role under CERCLA and is working closely with EPA and Grace to design a protective remedy.
- Currently, Grace is writing the Feasibility Study with EPA and DEQ oversight in a 4-step approach. The feasibility study is approximately halfway done
- Expecting a ROD sometime around 2026-2027
- Two main features of the Libby OU3 Site are the Kootenai Development Impoundment Dam and the related Spillway
- DEQ will remain fully engaged in its consultative role

## BRIEF HISTORY OF THE BANKRUPTCY

The timing of this Settlement Agreement is a result of Grace Filing an Objection to DEQ's pending Proof of Claim in the Bankruptcy. DEQ was not expecting this.

- 2007: DEQ filed Amended Proof of Claim, amid negotiations for the 2008 Settlement Agreement, for remedial costs for the entire Site, excluding OU3
- 2019 Objection: Grace sought to resolve DEQ's pending 2007 Proof of Claim by partially disallowing the remaining claims
- 2019-2022: Grace and DEQ/NRDP entered court-ordered confidential mediation to try to resolve these outstanding bankruptcy liabilities

## PURPOSE OF 2007 AMENDED PROOF OF CLAIM

- Preserve the State's ability to pursue additional claims against Grace for remedy and restoration costs
- Protect the State from potential future liability still present at Libby OU3 related to costs that CERCLA requires the State to pay when a PRP is unable to pay
- Generally, a placeholder for remedial costs and natural resource damage claims at OU3 until CERCLA remedial process had progressed to (at least) remedy selection for OU3
- Solely a function of the existing bankruptcy

# GENERAL OUTLINE OF THE SETTLEMENT AGREEMENT

## Focus and Components

- Addresses financial risk and potential future liability by focusing on the KDID and its spillway
- Provides for financial assurance for the KDID and Spillway
- Funds restoration work for natural resource damages caused at OU3
- Reimburses the State for most costs associated with the mediation

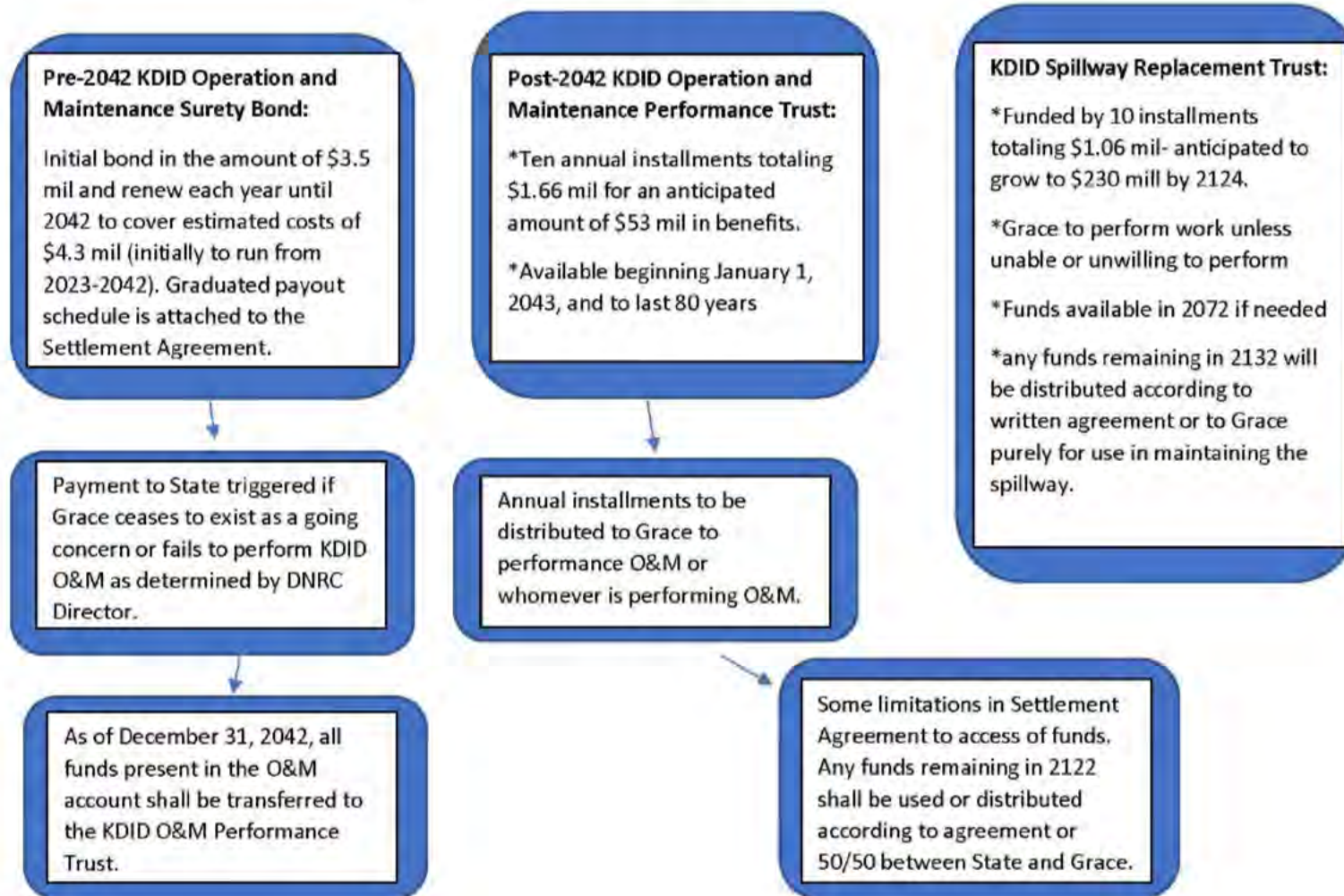
## Impacts

- Provides protection for the State
- Preserves the ability to pursue certain additional claims through creation of an Allowed Contingent OU3 Claim
- Does not in any way replace or limit the State's authority to regulate the dam through the Dam Safety Act under the authority of the Department of Natural Resources and Conservation
- Does not provide funding for response in the case of a catastrophic or other failure of the KDID or spillway
- Provides a backstop in the instance that no other authority provides protection and/or funding for public health and the environment and other State interests



# W.R. GRACE'S REMEDIAL FINANCIAL ASSURANCE PROPOSAL

Estimated worth of up to \$300 million



Please see handout provided in the meeting and linked on NRDP's website.



# MONTANA'S NATURAL RESOURCE DAMAGE PROGRAM (NRDP)

- Established in 1990
- NRDP Organization
  - **recovery component** (recovery of damages)
  - **restoration component** (to implement restoration using settlement funds)
- Mission: Act on behalf of the trustee, the Governor, to recover damages for natural resources injured by the release of hazardous substances and oil and to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources.

## NATURAL RESOURCE DAMAGE PORTION OF SETTLEMENT

- \$18.5M over 10 years plus interest;
  - First \$5 million due within 6 months;
  - \$1.5M + 4.19% interest per year for the next 9 years.
- State releases and agrees not to sue Grace for all natural resource damage claims, except for a catastrophic failure of the KDID.

## ALLOWABLE USES OF THE \$18.5 MILLION

- Can only be spent to restore the injured natural resources (lost recreational use, the surface water, wetlands, riparian areas, etc.); and
- All related costs to achieve and implement settlement.
- Cannot be transferred to general fund;
- Cannot be transferred to an account outside of the State.

## PAST COSTS TO IMPLEMENT SETTLEMENT

- Repay the Orphan Share Fund
- Repay DEQ's Settlement Account
- Outside Counsel Costs to Support State (DEQ and NRDP)

## POTENTIAL RESTORATION ACTIONS

- Must be consistent with settlement and CERCLA and CECRA.
- Governor has sole final authority to select restoration actions, after public comment.

## EXAMPLE RIPARIAN RESTORATION ACTIONS

- Removing/enhancing roads,
- Streambank stabilization,
- Floodplain restoration,
- Reconstructing stream channel(s),
- Constructing floodplain wetlands,
- Seeding, mulching, revegetation, and planting.

## EXAMPLE IN-STREAM HABITAT IMPROVEMENTS

- Adding meanders,
- Creating variable pool-riffle-run habitat,
- Installing boulders, woody debris, and other large structures.



## EXAMPLE FISH PASSAGE PROJECTS

- Removal of fish passage barriers,
- Enhancement of passage structures such as culverts and fish ladders,
- Installation of fish screens to reduce entrainment.

## EXAMPLE TERRESTRIAL RESTORATION ACTIONS

- Selective removal of non-native plant species,
- Planting of native trees and vegetation,
- Wildlife-friendly fencing.

## EXAMPLE RECREATIONAL ACTIONS

- Fishing access site,
- Other recreational sites (open space, etc.)
- Other recreational access site in Lincoln County.

## PROCESS IF SETTLEMENT IS IMPLEMENTED

1. After the first payment, early restoration of a specific project(s) could be done in the next few years;
2. Full restoration planning will occur after State receives entire settlement.
3. Both will involve lots of public meetings and outreach.
4. Public comment on scoping and restoration plans.
5. All restoration actions are voluntary.



THANK YOU!  
QUESTIONS

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