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# FINAL UPPER CLARK FORK RIVER BASIN INTERIM RESTORATION PROCESS PLAN

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**MAY 2012**

I hereby approve of this final document, along with the associated final response to comments on the February 2012 draft version of this document:

  
\_\_\_\_\_  
Governor Brian Schweitzer

  
\_\_\_\_\_  
Date



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## SECTION 1. INTRODUCTION AND BACKGROUND

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### 1.1 Purpose and Scope of this Document

This *Final Upper Clark Fork River Basin Interim Restoration Process Plan (Process Plan)* describes the process the State of Montana will use to develop restoration plans and fund restoration projects in the Upper Clark Fork River Basin (UCFRB) using natural resource damage settlement funds in the future. This *Process Plan* is based on the natural resource damage provisions in state and federal superfund law and on the *2011 Final UCFRB Long Range Priorities and Fund Allocation Guidance Plan (Long Range Guidance Plan)* approved by Governor Schweitzer on December 19, 2011. It is organized as follows:

- This introductory Section 1 describes the purpose and scope of this document and the steps that led to its development.
- Section 2 provides background on the entities involved in restoration plan development and funding decisions, and the associated public review steps.
- Section 3 describes the process for development and approval of groundwater replacement plans for priority water system improvement projects in Butte and Anaconda.
- Section 4 describes the process for the consideration of early restoration proposals during calendar year 2012.
- Section 5 describes the process for development and approval of Aquatic and Terrestrial Restoration Plans in priority resource areas. These plans will cover both resource and recreational improvement projects, and through this process plan, the State is soliciting ideas for such projects.
- Section 6 identifies the criteria that will be used to evaluate all restoration projects to be considered for funding inclusion in restoration plans.
- Section 7 describes the funding process for approved special projects, the Silver Bow Creek Greenway and Clark Fork Watershed Education Program, and the future planning process associated with any remainder Silver Bow Creek remediation funds.
- Section 8 describes fund accounting, reporting, and review procedures.

The State of Montana Natural Resource Damage Program (NRDP) developed this *Process Plan*, in consultation with fish and wildlife biologists from the Montana Department of Fish, Wildlife and Parks (FWP). This final version approved by the Governor incorporates changes made to a February 2012 draft of this document based on public comment and recommendations of the UCFRB Remediation and Restoration Advisory Council and the Trustee

Restoration Council. These changes are explained in a May 2012 final response to comment document.<sup>1</sup>

## 1.2 Background

In 1983, the State of Montana (State) filed a lawsuit against the Atlantic Richfield Co. (ARCO) for injuries to the State's natural resources in the UCFRB, which extends from Butte to Milltown (Figure 1-1). The lawsuit was brought under federal and state Superfund laws and sought damages from ARCO. Decades of mining and smelting by ARCO and its predecessors in the Butte and Anaconda areas released hazardous substances that injured natural resources and deprived Montanans of their use. In 1989, the Environmental Protection Agency (EPA) filed another lawsuit to establish ARCO's liability for remedial cleanup in the UCFRB.

The NRDP pursued the natural resource damage (NRD) litigation against ARCO on behalf of the State. The State settled this lawsuit through a series of settlement agreements completed in 1999, 2005, and 2008.<sup>2</sup> This process plan is specific to the expenditure of the UCFRB Restoration Fund, which was established with natural resource damages recovered in the State's partial settlement of its lawsuit in 1999. The consent decrees for the 2005 and 2008 settlement agreements, along with the restoration plans approved pursuant to those decrees, provide the framework for expenditures of natural resource damages obtained from those settlements.

The UCFRB Restoration Fund contains no Montana taxpayer funds, is administered by the Governor of Montana as trustee for natural resources of the State, and is established to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources of the UCFRB. Between 2000 and 2011, the NRDP administered an annual restoration grants process funded largely by the interest earnings of the UCFRB Restoration Fund, pursuant to procedures and criteria specified in the *UCFRB Restoration Plan Procedures and Criteria (RPPC)*.<sup>3</sup> In late 2011, the Governor approved a revised framework document for UCFRB Restoration Fund expenditures, the *Long Range Guidance Plan* (attached hereto as Attachment 1-1). This approval fundamentally altered the approach taken to date in expending the UCFRB Restoration Fund. It allocated the remaining balance of the UCFRB Restoration Fund, which is about \$110 million as of 12/31/11, into separate funds for groundwater, aquatic, and terrestrial resource restoration projects in priority resource areas of the UCFRB based on the proportionate lawsuit claims for groundwater, aquatic, and terrestrial injuries. It also triggered the development of this *Process Plan*, which replaces the *RPPC* and covers the process for development of the restoration plans that will dictate the expenditures of UCFRB Restoration Fund in the future.

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<sup>1</sup> The May 2012 "Final Response to Public Comments on the February 2012 Draft UCFRB Interim Restoration Process" is available from the NRDP website at <https://doj.mt.gov/lands> or upon request to the NRDP.

<sup>2</sup> These settlements are summarized on the NRDP's website at: <http://doj.mt.gov/lands/lawsuit-history-and-settlements-2>.

<sup>3</sup> *UCFRB Restoration Plan Procedures and Criteria (RPPC)*, prepared by the NRDP in February 2000, and subsequently revised in March 2002, January 2006, and January 2007.

Other than early restoration, restoration projects funded in the future by the UCFRB Restoration Fund will be implemented through the resource-specific restoration plans being developed for groundwater, aquatics, and terrestrial resources pursuant to the procedures and criteria specified in this *Process Plan*. The *Long Range Guidance Plan* recognizes that this process plan and all resulting restoration plans must comply with federal and state laws regarding restoration plans. Under the federal Superfund law, the natural resource trustees must complete a restoration plan and consider public input before NRD settlement funds can be spent.<sup>4</sup> The restoration plan needs to specify how funds will be spent and include an evaluation of restoration alternatives according to criteria specified in federal NRD regulations.<sup>5</sup>

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<sup>4</sup> 42 U.S.C. §9607 and §9611

<sup>5</sup> 43 CFR §11.93





## SECTION 2. PLANNING ENTITIES AND APPROVAL PROCESS

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The *Long Range Guidance Plan* maintained a similar review and approval process as was previously set forth in the *RPPC*. This section describes the entities involved with the review and approval of the new restoration plans.

### 2.1 Governor

The federal Superfund law provides that the “Governor of each state shall designate state officials who may act on behalf of the public as trustees for natural resources.” In 1990, Montana’s Governor designated the Governor as “Trustee.” Since that time, the Governor of the State of Montana has served as the ultimate decision maker on Montana’s NRD lawsuits. In addition, the Governor, as Trustee, maintains the ultimate authority over restoration planning and the expenditure of the recovered damages. Accordingly, this document is being developed on behalf, and under the authority, of the Governor in his/her role as Trustee.

### 2.2 Trustee Restoration Council

Following its partial settlement of *Montana v. ARCO* in 1999, and associated with the development of the *RPPC*, the Governor created the UCFRB Trustee Restoration Council (TRC). The TRC makes recommendations to the Governor on expenditures of natural resource damages recovered by the State and restoration plans for those expenditures. The TRC consists of six members: the Governor’s Chief of Staff, the directors of the Departments of Environmental Quality, Fish, Wildlife and Parks, and Natural Resources and Conservation, the Attorney General (who is a non-voting member), and the Chairman of the UCFRB Remediation and Restoration Advisory Council.

### 2.3 UCFRB Remediation and Restoration Advisory Council

By executive order in 1998, the Governor established the UCFRB Remediation and Restoration Advisory Council (Advisory Council) to facilitate public dialogue, promote public understanding, and advise the Governor with respect to issues involving remediation and restoration efforts in the UCFRB. This executive order has been renewed every two years since 1998, with some modifications to the executive order occurring upon some renewals. The Council consists of eight citizen members who are residents of the five counties in the UCFRB (Silver Bow, Deer Lodge, Powell, Granite, and Missoula counties) and representatives of the Confederated Salish and Kootenai Tribes, the U.S. Department of Interior, and the directors of the three state natural resource agencies. The three state agency representatives on the Advisory Council are non-voting members. The *Long Range Guidance Plan* is, in large part, based on a proposal recommended by the 2010 Advisory Council.<sup>6</sup>

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<sup>6</sup> *Resolution by the UCFRB Remediation and Restoration 2010 Advisory Council for Adoption of a Long Range Restoration Priorities and Fund Allocation Guidance Plan*, dated December 15, 2010 (available upon request to the NRDP).

## 2.4 Natural Resource Damage Program

Since 1990, the NRDP, which is attached to the Montana Department of Justice, has been responsible for performing the necessary NRD assessments and pursuing the Montana's NRD lawsuit against ARCO. Since the first partial settlement of Montana v. ARCO in 1999, the NRDP also began to administer a restoration grants program and manage and oversee restoration work at certain injured areas in the UCFRB. The NRDP has the primary responsibility to develop and recommend the approval of the restoration plans for natural resource damages recovered by the State.

## 2.5 Review and Approval Processes and Public Participation

Similar to the draft version of this document, the subsequent draft restoration plans produced pursuant to this *Process Plan* will generally be subject of the same review and approval steps that were used for past expenditures of the UCFRB Restoration Fund. The draft restoration plans will each be subject of a public comment period of at least 30 days and consideration by the Advisory Council and the TRC. Following consideration of public input and the recommendations of these two councils, the Governor will make the final decision on these plans. Any substantive change to any of these plans would be subject to the same review and public comments steps prior to a final decision by the Governor.

This review and approval process provides multiple opportunities for meaningful public participation in the development of restoration plans. The public has the opportunity to provide public comments on the draft plans during the designated comment periods, and also at the meetings of the Advisory Council and TRC at which these plans are considered. Input from the Advisory Council also serves as an avenue of public input. Opportunity for public input will also occur prior to issuance of the draft restoration plans through the State's planned public solicitation of aquatic and terrestrial conceptual restoration proposals, as described in Section 5.

## **SECTION 3. GROUNDWATER RESTORATION PLANS**

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This section describes the process for the development, approval, and implementation of Groundwater Restoration Plans for priority water system improvement projects for Butte and Anaconda and identifies the fund allocations specific to these plans.

### 3.1 Groundwater Resource Fund Allocations

The *Long Range Guidance Plan* allocated 36% of the UCFRB Restoration Fund to replace injured groundwater resources and associated lost use services in Butte and Anaconda, with 75% of that 36% set aside for water system improvements in Butte and 25% of that 36% set aside for water system improvements in Anaconda. The water system improvements constitute replacement of the injured bedrock groundwater resources in Butte and injured groundwater resources in the Anaconda area that cannot be restored due to technical impracticability determinations, as further detailed in the State's 1995 Restoration Determination Plan for these injured resources.<sup>7</sup> As further detailed in Section 8, taking past approved groundwater resource and service projects into consideration, and based on the UCFRB Restoration Fund balance as of December 31, 2011, the estimated allocation to the Butte Groundwater Account is \$28.2 million, and the estimated allocation to the Anaconda Groundwater Account is \$9.4 million. The exact allocation amounts will be based on the UCFRB Restoration Fund Balance at the end of the month following the month in which the Governor approves this *Process Plan*. Unlike the allocations to aquatic and terrestrial resources, the *Long Range Guidance Plan* did not specify any reserve fund for the groundwater allocations. These funds earn interest as detailed in Section 8.

### 3.2 Development of Groundwater Restoration Plans

The *Long Range Guidance Plan* specifies the following principles regarding the development of Groundwater Restoration Plans:

- 1) that the NRDP develop for Advisory Council and TRC consideration and Trustee approval a streamlined, non-grant process for the approval and implementation of future water system improvement projects;
- 2) that Anaconda-Deer Lodge City/County (ADLC) and Butte-Silver Bow City/County (B-SB) each develop a detailed proposal for how and when they would spend their allocations over a period not to exceed 20 years on drinking water system improvement projects consistent with the priorities set forth in their respective water system master plans;

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<sup>7</sup>*Restoration Determination Plan for the Upper Clark Fork River Basin, prepared by the Natural Resource Damage Program and Rocky Mountain Consultants, Inc., dated October 1995. At the time of the 1995 assessment, the injury to the Butte bedrock groundwater aquifer covered 7 square miles and had a volume of 220,000 acre feet and the injury to groundwater resources in/near Anaconda covered over 40 square miles and had a volume of more than 400,000 acre-feet. This 1995 technical impracticability determination was specific to the Butte bedrock aquifer and not the Butte alluvial aquifer.*

- 3) that ADLC and B-SB implement their proposals following consideration by the NRDP, Advisory Council, TRC, general public, and final approval by the Trustee; and
- 4) that implementation would include necessary oversight and review by NRDP, with funds distributed on a reimbursement basis.

The following process steps build on these principles.

ADLC and B-SB (“Counties”) will rely on the priorities identified in their drinking water system master plans to develop proposed Groundwater Restoration Plans that address the planned implementation of a set of water system improvement projects for a certain number of years, not to exceed 20 years. The Counties may choose to submit these plans in phases, such as 5-year or 10-year plans. The Groundwater Restoration Plans will provide the following information:

- 1) a description of the type and locations of the projects to be implemented (e.g., waterline upgrades, water storage upgrades, metering, pump station upgrades, new water supply or storage facilities, including any needed easements or fee-title purchases for such facilities, drinking water treatment plan upgrade). Only a brief project description and general location is needed. For example, indicating the amount of water system main lines to be upgraded in a certain area of Butte or Anaconda is sufficient level of detail.
- 2) a general summary of project benefits (e.g., percentage reduction in leakage or volume of increased new storage capacity).
- 3) the estimated costs for the projects, broken down to indicate contracted engineering or construction services, in-house salaries and benefits, materials/supplies, and other miscellaneous costs.
- 4) the timeframe for implementing the projects.
- 5) a description of any related monitoring activities, such as monitoring tied to project effectiveness.
- 6) a summary analysis of the projects collectively for the NRD evaluation criteria specified in Section 6. For example, if all the projects involve waterline replacements, they will likely be of similar cost-effectiveness, technical feasibility, health and safety, and environmental impacts. Since the Groundwater Restoration Plans will be based on the Counties’ approved master plans, presumably the Counties have already accomplished most of this needed criteria analysis, since the master plans address cost-effectiveness, technical feasibility, regulatory requirements, and environmental impacts, which are also NRD criteria.

Each County can propose their plan independent of each other and of the other restoration plan development processes specified herein for aquatic and terrestrial resources. The Groundwater Restoration Plans will be subject of review by the NRDP, Advisory Council, TRC, and public prior to a final decision by the Governor, as further described in Section 2. This review process will take about three months to complete following submittal of a Groundwater Restoration Plan that provides the above information. The Groundwater Restoration Plans should be submitted no later than September 2012 in order to facilitate a decision by the

Governor by the end of calendar year 2012. The Counties have indicated their intent to submit their plans well before then.<sup>8</sup>

### 3.3 Implementation of Groundwater Restoration Plans

The Counties will implement the projects covered in the approved Groundwater Restoration Plans pursuant to terms of a contractual agreement. These contracts will have similar standard contracting provisions as those in the previous grant agreements executed between the Counties and NRDP, such as the requirement that the Counties meet all applicable laws and regulations, including applicable procurement laws and regulations. The scope of work for these contracts will cover all the multiple projects specified in the approved Groundwater Restoration Plans. Reimbursement will occur following the Counties' submittal of a completed and correct invoice, with proper cost documentation of and a progress report on activities covered under the invoice. NRDP review of the design documents for consistency with the scope of work and budget of approved Groundwater Restoration Plans is required before project implementation begins. Reimbursements can occur either on a monthly or quarterly basis, as requested by the Counties.

The Counties' administrative costs to prepare and implement these plans can also be funded by priority groundwater funds, retroactively to the date of the Governor's approval of this process plan. To be eligible for reimbursement, the Counties will need to document these costs separate from other county administrative costs. Consistent with the *Long Range Guidance Plan*, the administrative costs associated with the NRDP's limited oversight role of groundwater projects and accounting will be tracked separately and charged to the specific groundwater priority account that is associated with such oversight. The NRDP's costs to review Butte's restoration plans will be charged to the Butte Groundwater Account and the NRDP's costs to review Anaconda's restoration plans will be charged to the Anaconda Groundwater Account.

Each County will produce annual status and financial reports for activities conducted each year pursuant to an approved Groundwater Restoration Plan. These reports will be incorporated into the NRDP's annual report on funded projects. Once a County has completed the projects specified in its plan, it can submit for review an additional Groundwater Restoration Plan for the expenditure of any remaining funds, including the interest earned, in its account.

The NRDP also would review any changes or amendments proposed by the Counties to approved restoration plans to determine whether they are of such substantive nature that they would require public review and approval by the Governor. Substantive changes of scopes may occur in limited situations. Changing the location or number of waterlines to be replaced within Butte or Anaconda would not constitute a substantive change of scope. Proposing to use funds, however, for the development of a new waterline to a new subdivision, for example, would constitute a substantive change in scope. If, for one reason or another, a County is unable to proceed with a project covered in its approved restoration plan, an amendment of that plan would not be needed. In that situation, the County could use any funds leftover after the restoration

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<sup>8</sup> Based on calls between NRDP staff and B-SB staff on 9-28-11 and ADLC staff on 10-26-11, the Counties plan to submit their Groundwater Restoration Plan soon after the Governor's approval of this *Process Plan*.

plan was completed on projects proposed in a subsequent restoration plan submitted for review/approval according the procedures specified above.

It is understood that the projects implemented pursuant to the approved Groundwater Restoration Plans will not address all the water system needs identified in the Counties' master plans or elsewhere; they will only address a subset of those needs. The Counties will need to rely on a combination of ratepayer fees, non-NRD grant funds, and loans to address all system needs. These groundwater allocation funds are intended to address the highest priority upgrades and help the Counties upgrade their drinking water systems upgraded to a routine maintenance level. If a County wants to include a project in the Groundwater Restoration Plan that is not consistent with the priorities of their most current approved master plan, it first needs to amend its master plan to make the project a high priority.

The State is not requiring the Counties, as part of this restoration planning process, to provide matching funds or to meet the metering or target rate requirements of other State funding programs.<sup>9</sup> The State does, however, encourage the Counties to continue with efforts to accomplish community-wide metering and meet target rates and thereby increase the opportunity to leverage funds and maximize the water system work than can be accomplished in conjunction with the groundwater restoration funds that are being allocated to the Counties through this *Process Plan*.

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<sup>9</sup> The Department of Commerce uses a target rate to assess whether a community is adequately funding any public facility project in proportion to their financial resources. The community is eligible for state grant assistance through the Community Development Block Grant Program or Treasure State Endowment Program, if at the end of the project they have met their target rate that has been determined for their community. Metering is highly encouraged to receive funding consideration given the competition for these grants funds and preference/priority given to communities with fully metered systems compared to those that are not.

## SECTION 4. 2012 EARLY RESTORATION PROPOSALS

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The *Long Range Guidance Plan* indicates that the Trustee will entertain early restoration proposals for restoring lost aquatic and terrestrial resources during calendar year 2012. This section describes the process for the submittal and consideration of such proposals for funding. Approved early restoration proposals would be funded by the Aquatic and/or Terrestrial Priority Accounts that are further described in Section 5.

### 4.1 Early Restoration Project Eligibility Restrictions

#### 4.1.1 Project Type Eligibility

Pursuant to the *Long Range Guidance Plan*, only projects that would improve injured aquatic or terrestrial resources or lost services are eligible for consideration as early restoration proposals. This would include natural-resource based recreational-service projects, provided they offer additional natural resource benefits and not just recreational benefits (see Section 5.5 for more guidance on recreation projects). Groundwater restoration projects, including drinking water replacement projects, as well as project development grants and education projects are not eligible for early restoration funding consideration. The *Long Range Guidance Plan* provides a separate funding mechanism for groundwater and education projects. Project development grants do not fit the time critical requirement of Early Restoration Proposals.

#### 4.1.2 Project Location Eligibility

The *Long Range Guidance Plan* specifies that early restoration proposals for aquatic and terrestrial restoration projects must be located in:

- 1) the aquatic and terrestrial injured resource areas for which the State made restoration claims, or
- 2) the priority areas identified in the final 2011 Aquatic and Terrestrial Prioritization Plans.<sup>10</sup>

Section 5.2 provides further information on the location of these two types of areas.

#### 4.1.3 Project Exigency Requirements

Early restoration proposals must be also be time critical, of extraordinary importance, and capable of being implemented within 12 to 18 months of Trustee funding approval. Applicants for early restoration proposals must demonstrate that their proposals merit an expedited funding

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<sup>10</sup> These two prioritization plans (*UCFRB Terrestrial Wildlife Resource Prioritization*, jointly prepared by the FWP and NRDP, Final dated December 2011; and *Prioritization of Areas in the UCFRB for Fishery Enhancement*, jointly prepared by FWP and NRDP, Final dated December 2011) are available from the NRDP website at: <http://doj.mt.gov/lands/prioritizing-aquatic-and-terrestrial-resources>.

decision ahead of completion of the Aquatic and Terrestrial Restoration Plans being developed.<sup>11</sup> Given that these restoration plans are expected to be finalized in December 2012, only limited circumstances are likely to warrant an earlier funding decision.

#### 4.2 Solicitation of 2012 Early Restoration Proposals

The State will entertain submittal of early restoration proposal applications by Friday, June 1, 2012. Application and instructions for early restoration proposals are attached as Appendix A; this application was included in the February 2012 draft version of this *Process Plan*. This application is similar to the application used for the past grant cycles, but with less evaluation criteria to address. The application calls for a fairly high level of detail, so early restoration projects need to be well developed.

#### 4.3. Minimum Qualifications

To assure that each proposed project meets the minimum qualifications for funding, the NRDP will conduct an initial application screening focused on the following items:

1. That the application is completed fully and accurately, and contains all necessary information.
2. That the proposed project would restore, rehabilitate, replace, or acquire the equivalent of the natural resources injured or services lost as a result of releases of hazardous substances by ARCO or its predecessors that were the subject of Montana v. ARCO.
3. That the proposed project be located within the aquatic and terrestrial injured resource areas in the UCFRB for which the State made restoration claims or in the priority areas identified in the State's Aquatic and Terrestrial Prioritization Plans.
4. That the proposed project is time critical, of extraordinary importance, and capable of being implemented within 12 to 18 months of funding approval.
5. That the project will not potentially interfere, overlap, or partially overlap with the remediation or restoration work provided for or planned under existing or anticipated consent decrees, Record of Decisions, or restoration plans.

If the NRDP determines a project does not meet the minimum qualifications for funding, the applicant, within 15 days of receiving written notice of this determination, may appeal the determination to the TRC. Early restoration proposals, which are consistent with items 2, 3, and 5 above, that are not accepted for early restoration will, at the applicant's request, be considered for inclusion in the subsequent Aquatic and Terrestrial Restoration Plans, in accordance with the provisions of this *Process Plan*.

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<sup>11</sup> These exigency requirements are consistent with NRD regulations providing that restoration plans be completed before recovered natural resource damages can be spent ( see 43 CFR §11.93).



#### 4.4 Early Restoration Project Evaluation and Decision-Making

All applications will be thoroughly reviewed and evaluated by the State. Section 6 of this *Process Plan* specifies the criteria the State will use to evaluate early restoration proposals that meet the minimum qualifications. The NRDP will assess the degree to which proposed early restoration projects meet each criterion. If any of the proposed projects meet the minimum qualifications, the NRDP will prepare a draft “Early Restoration Plan” that contains its recommendations for funding or not funding the projects, and the reasons for its recommendations based on its analysis. This draft Early Restoration Plan will be subject to a 30-day public comment period and subsequently considered by the Advisory Council, which will develop its funding recommendations for consideration of the TRC and Governor. Based on input from the NRDP, Advisory Council, TRC, and the public, the Governor will make a final funding decision. The State is hopeful that this process can be concluded by early October 2012.

#### 4.5 Project Implementation, Follow Up, and Monitoring

Upon approval of an Early Restoration Plan, if any, an applicant will be required to enter into a grant agreement with NRDP before any funds can be expended or received. The model grant agreement available on the NRDP’s website indicates the general applicant responsibilities.<sup>12</sup> Detailed scopes of works, budgets, and project schedules are required in all agreements, and must be approved by NRDP before any work, which will be paid for by UCFRB Restoration funds, can begin. Expenses incurred by an applicant before the grant agreement becomes effective will not be reimbursed.

The NRDP will ensure that any approved early restoration projects are implemented by the applicants consistent with scope and budget of the project as approved. Accordingly, prior to beginning construction, and preferably before bid packages are advertised, an applicant will be required to submit final design plans to the NRDP for review and concurrence that the proposed design is consistent with the approved proposal. The State shall have the authority to terminate project funding if it finds that the project design is not consistent with the approved proposal, including the 18 month project completion requirement.

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<sup>12</sup> <http://doj.mt.gov/wp-content/uploads/2011/06/samplegrantagreement.pdf>



## **SECTION 5. AQUATIC AND TERRESTRIAL RESTORATION PLANS**

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This section describes the process for the development of Aquatic and Terrestrial Restoration Plans specific to aquatic and terrestrial resource priority areas within the UCFRB. Sections 5.1 and 5.2 identify the fund allocations and project location restrictions specific to these two restoration plans, respectively. Section 5.3 describes the plan development process, including the public solicitation of conceptual restoration plan proposals, and how the Aquatic and Terrestrial Restoration Plans will generally be implemented. Additional guidance is provided in Section 5.4 on the types of aquatic and terrestrial restoration projects to be included in the restoration plans. Section 5.5 provides additional guidance specific to recreational projects.

### 5.1 Aquatic and Terrestrial Fund Allocations

Aquatic Priority and Reserve Fund Allocations: The *Long Range Guidance Plan* allocated 39% of the UCFRB Restoration Fund to restore or replace injured aquatic resources and services in priority aquatic areas, with 15% of that set aside in a reserve fund. As further detailed in Section 8, taking past approved aquatic resource and service projects into consideration, and based on the UCFRB Restoration Fund balance as of December 31, 2011, the estimated allocation to the Aquatic Priority Account is \$43.3 million. The estimated allocation to the Aquatic Reserve Account is \$7.6 million.

Terrestrial Priority and Reserve Fund Allocations: The *Long Range Guidance Plan* allocated 25% of the UCFRB Restoration Fund to restore or replace injured terrestrial resources and services, with 15% of that set aside in a reserve fund. As further detailed in Section 8, taking past approved terrestrial resource and service projects into consideration, and based on the UCFRB Restoration Fund balance as of December 31, 2011, the estimated allocation to the Terrestrial Priority Account is \$18.4 million. The estimated allocation to the Terrestrial Reserve Account is \$3.2 million.

The exact allocation amount for these resource priority and reserve funds will be based on the UCFRB Restoration Fund Balance at the end of month following the month in which the Governor approves of this *Process Plan*. Consistent with the *Long Range Guidance Plan*, funds allocated to each reserve account will be ineligible for expenditure until such a time that all of the available aquatic or terrestrial priority funds in such accounts have been committed to specific projects. At such time, the applicable Aquatic or Terrestrial Restoration Plan can be revised to reflect proposed changes tied to use of its reserve account. Those changes would be subject to the standard public review and approval process outlined in Section 2.

The Aquatic Priority Account would be used to fund approved aquatic restoration projects, including any approved as early restoration proposals. The Terrestrial Priority Account would be used to fund approved terrestrial restoration projects, including any approved as early restoration proposals. The costs of approved projects that have both aquatic and terrestrial restoration components would be debited from the Aquatic and Terrestrial Priority Accounts in a

manner similar to how funding for past approved projects was broken down by resource category in the *Long Range Guidance Plan*.<sup>13</sup>

## 5.2 Aquatic and Terrestrial Injured Resource Areas and Priority Areas

The *Long Range Guidance Plan* targets the expenditure of the Aquatic and Terrestrial Priority Accounts for the restoration or replacement of injured aquatic and terrestrial resources and associated services to the following locations within the UCFRB:

- 1) the aquatic and terrestrial injured resource areas for which the State made restoration claims, and
- 2) the priority areas identified in the final 2011 Aquatic and Terrestrial Prioritization Plans, and any subsequent updates and revisions to those plans.

Accordingly, all aquatic and terrestrial restoration projects, including recreation projects, must be located in one of these locations to be eligible for funding consideration under the Aquatic and Terrestrial Restoration Plans developed pursuant to this *Process Plan*. These are the same priority areas that apply to early restoration proposals.

### Aquatic Injured Resource Areas and Priority Areas

Figures 5-1 and 5-2 contain maps showing the aquatic injured resource areas and priority areas.<sup>14</sup> The aquatic injured resource areas for which the State made restoration claims include: the mainstem of Silver Bow Creek from its headwaters in Butte to the Warm Springs Ponds, and the mainstem of the Upper Clark Fork River from the Warm Springs Ponds to, and including, the former Milltown reservoir site (Figure 5-1).

There are 61 priority areas identified in the Aquatic Prioritization Plan (Figure 5-2). These aquatic priority areas are further classified as Priority 1, 2, 3, or 4 areas, with 1 being the highest priority and 4 the lowest. The Aquatic Prioritization Plan more specifically classifies the portions of the mainstem Upper Clark Fork River above Deer Lodge as Priority 1 for instream flow augmentation projects and other areas of the mainstem Upper Clark Fork River and the mainstem of Silver Bow Creek as Priority 2 for instream flow augmentation.

### Terrestrial Injured Resource Areas and Priority Areas

Figures 5-3 and 5-4 contain maps showing the terrestrial injured resource areas and priority areas.<sup>15</sup> The priority areas identified in the Terrestrial Prioritization Plan, which cover about one-third of the lands in the UCFRB, are similarly classified as either Priority 1, 2, 3, or 4

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<sup>13</sup> This analysis is provided in Attachment C to the *Long Range Guidance Plan* (Attachment 1-1).

<sup>14</sup> These maps are available on the NRDP website at: <https://doj.mt.gov/lands/prioritizing-aquatic-and-terrestrial-resources/>.

<sup>15</sup> These maps, along with larger scale maps of the terrestrial priority areas, are available on the NRDP website at: <https://doj.mt.gov/lands/prioritizing-aquatic-and-terrestrial-resources/>.

(Figure 5-3). The Terrestrial Prioritization Plan classifies all riparian, wetland, and aspen habitat as Priority 1 because these areas have such a high value to wildlife. Such Priority 1 designation covers the injured Opportunity Ponds area, the mainstem injured riparian corridors of Silver Bow Creek and the Upper Clark Fork River from Butte to, and including, Milltown that were subject of both aquatic and terrestrial restoration claims. The terrestrial injured resource areas for which the State made restoration claims also include the Silver Bow Creek and Upper Clark Fork River mainstem injured areas, as well as the Smelter Hill Area Uplands and Opportunity Ponds injured areas (Figure 5-4).

As indicated in the above-referenced maps of injured resource areas and priority areas, some overlap occurs between the aquatic and terrestrial injured areas for which the State made restoration claims and the priority areas designated in the Aquatic and Terrestrial Prioritization Plans. The only injured aquatic or terrestrial resource area not classified as a priority area under either prioritization plan is the Smelter Hill Area Uplands. The resource injury claim for this site is being addressed with other NRD funds and by remediation. However, restoration proposals in the Smelter Hill Area Uplands can be considered for inclusion in the Terrestrial Restoration Plan on a case by case basis.

Any plans for future restoration must take into consideration work that has already been done or will be done in injured aquatic and terrestrial resource areas using dedicated funding for remediation and restoration of these areas. For some of these areas, no other work may be needed beyond what will be accomplished by the existing plans and dedicated funds. Both the prioritization plans provide summaries of this planned work.<sup>16</sup>

### 5.3 Development of Aquatic and Terrestrial Restoration Plans

The *Long Range Guidance Plan* indicates that, after the early restoration proposal process in calendar year 2012, funding for aquatic and terrestrial restoration proposals will be “guided solely by a more specific restoration plan which will be prepared by NRDP staff and that will develop, evaluate, and make recommendations for future funding of projects and programs to fulfill the requirements of federal and state law.”<sup>17</sup> This more specific restoration plan will consist of two plans, an Aquatic Restoration Plan governing future expenditures from the Aquatic Priority Account, and a Terrestrial Restoration Plan governing future expenditures from the Terrestrial Priority Account.

As discussed in Section 6.3 (Analysis of Alternatives) and Attachment 6-4, the State has considered numerous restoration alternatives for groundwater, aquatic, and terrestrial resources in the UCFRB, including various alternatives to prioritizing areas for the restoration and replacement of aquatic and terrestrial resources considered during the development of the prioritization plans. Considerable scientific data, analysis, and expertise contributed to the State’s development of these prioritization plans, which were subject to substantial public consideration over an 18 month period. The prioritization plans built on the restoration actions already conducted or planned for the Silver Bow Creek, Clark Fork River, Smelter Hill Area

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<sup>16</sup> See pp. 2 – 4 of the Aquatic Prioritization Plan and pp. 24-26 of the Terrestrial Prioritization Plan.

<sup>17</sup> See p. 5 of the *Long Range Guidance Plan* (Attachment 1-1).

Uplands, Butte Area One, and Milltown sites. The Aquatic Prioritization Plan focused on a combination of restoration and replacement alternatives. It prioritized tributary areas based on helping restoration of the mainstem fisheries and identified increasing flows on the mainstems as a priority in considering what additional measures along the mainstems, beyond those already conducted or planned and funded, were needed to restore the mainstem fisheries.<sup>18</sup> The Terrestrial Prioritization Plan focused on replacement alternatives, addressing the remediation and restoration efforts funded through other efforts that will cost-effectively address the terrestrial resource injured areas. Both these plans identified priority areas for aquatic and terrestrial restoration from 1 to 4 (with 1 being the highest priority and 4 being the lowest), with some landscapes and water bodies not prioritized.

As discussed, both the *Long Range Guidance Plan* and the prioritization plans involved significant analysis and public involvement. The adoption of the prioritization plans as part of the *Long Range Guidance Plan* narrows the universe of restoration alternatives. Relying on the prioritization plans, the State's focus becomes restoration alternatives in the high Priority 1 or 2 areas, consistent with the sequential approach to restoration work advocated in the prioritization plans,<sup>19</sup> or in the aquatic and terrestrial injured resource areas for which the State made restoration claims. This *Process Plan* then requires the application of the evaluation criteria, set forth in Section 6, to those restoration alternatives. While there remain unknowns regarding all restoration needs in the UCFRB, the injured natural resources will benefit most from focusing first on the known highest priorities and then later adjusting them through amendments.

### 5.3.1 Public Solicitation of Aquatic and Terrestrial Conceptual Restoration Proposals

The State recognizes the wealth of knowledge and relationships that other entities can bring to the restoration planning process. As part of this next restoration planning phase, the State will therefore be soliciting from the public, including governmental entities, restoration concepts that would protect or enhance fishery or wildlife resources in Priority 1 and 2 areas or in the aquatic and terrestrial injured resource areas for which the State made restoration claims, or enhance recreational services associated with these resources, such as fishing, floating, hunting, wildlife viewing, and hiking. Concept proposals may include the identification of partners whose assistance and cooperation may be helpful or necessary during implementation of a restoration alternative. It is likely additional solicitations would be periodically conducted at a later date, after prioritization plans are updated, as further explained in Section 5.4.

For consideration as part of the 2012 aquatic and terrestrial restoration planning process, interested individuals and entities must complete and submit the "Proposed Restoration Concept Abstract Submittal" that is provided in Attachment 5-1 by **Friday, June 15, 2012**. As indicated on the solicitation form, only preliminary information is being requested for these restoration plan proposals (general description of conceptual project, location, potential benefits, general schedule, and cost estimate). Since most of the project development work for such proposals is not anticipated to have been completed by the submission date, the State expects that costs, in particular, will be preliminary estimates based on limited information. The State will include a

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<sup>18</sup> See pp. 2 – 4 of the final Aquatic Prioritization Plan.

<sup>19</sup> See pp. 10 – 11 in the Terrestrial Prioritization Plan and Table 2 on pp. 24 – 25 in the Aquatic Prioritization Plan.

summary of the restoration planning process for aquatic and terrestrial resources with the form in its public outreach about this solicitation process.

### 5.3.2 Integration of Restoration Proposals into the Restoration Plans

The State will carefully consider incorporating the conceptual proposals submitted by the public, along with State-generated alternatives, in its preparation of the Aquatic and Terrestrial Restoration Plans. Using the criteria specified in Section 6, the State will evaluate these proposals and alternatives to determine what to include in the restoration plans. In addition, some, but not all components of a conceptual proposal could be included in a plan. This criteria analysis will meet the substantive requirements of the federal NRD law and regulations. The State may enlist consultant assistance in preparing the Aquatic and Terrestrial Restoration Plans, including the cost estimates. Draft Aquatic and Terrestrial Restoration Plans will be completed and issued for public comment by late September 2012. The Advisory Council and Trustee Restoration Council will consider public comment and make recommendations to the Governor on a proposed final plans in early and mid-November 2012, respectively, with a decision by the Governor to occur by year end.

### 5.3.3 Implementation of Restoration Plan Projects

The Aquatic and Terrestrial Restoration Plans to be developed in 2012 will describe how and when the selected alternatives will be further developed and implemented and what additional review and approval steps, if any, are needed. In fact, some projects may not reach the implementation stage, depending on results of the project development phase. Some approved projects will be developed and implemented by the State and other approved projects will be developed and implemented by other entities in partnership with the State in a manner consistent with State procurement requirements. For example, the State may work with a non-profit conservation group or a local conservation district on a stream restoration project, with some tasks being conducted by the State and some tasks being conducted by other entities as a contracted service to the State. Another example could be the State partnering with a non-profit land conservation organization to accomplish high priority land purchases or to secure conservation easements. Some partners may be identified early in the restoration planning through the public scoping process described above; other partners may be identified later after the Aquatic and Terrestrial Restoration Plans have been adopted.

Although there is no matching fund requirement for restoration proposals, as part of the project development efforts, opportunities to leverage funds can be explored.

The specifics of implementation will depend, in large part, on the particulars of each project that is included in the restoration plans, and the methods for project implementation are likely to vary. The restoration plans will consider whether the State should issue implementation plans that describe the project development and implementation work to occur over a specified timeframe, such as annually. The restoration plans will identify which of the alternatives included in the restoration plans are more conceptual in nature, and will be further detailed in subsequent implementation plans. Compliance with State procurement regulations will affect

how and what entities implement projects. Restoration work on private lands will require landowner consent.

Projects included in the Aquatic or Terrestrial Restoration Plans that have been well developed with reasonable cost estimates will not require subsequent approval by the Trustee. Other projects of only a general or conceptual nature that require further development of project scope, tasks, and costs, however, would require a subsequent approval by the Trustee, following consideration and input from the public, Advisory Council, and TRC.

#### 5.4 Restoration Plan Revisions and Updates

Significant changes to the restoration plans will be subject to public notice and comment before the Governor considers them for adoption. All changes must comply with federal and state laws regarding restoration plans. As stated in Section 5.3.1, the State recognizes that not all the aquatic or terrestrial restoration alternatives will be known at the time of the 2012 restoration plan development. The prioritization plans also recognize that information about aquatic and terrestrial resources in the UCFRB is still developing, and therefore recommend periodic re-evaluation and update of priorities.<sup>20</sup> The Aquatic Prioritization Plan proposed re-evaluating the priority streams every two years during the first five years. Given these considerations, the State proposes that the Aquatic and Terrestrial Restoration Plans be reviewed and revised two years after the Governor's approval. The frequency of later reviews/revisions after this initial two year review can be addressed in the subsequent plans. The revisions to the restoration plans will include a public solicitation of conceptual restoration proposals for potential inclusion into revised restoration plans. As further explained in Section 7.3, the Aquatic and Terrestrial Restoration Plans will also be subject to revisions if and when the excess amount in the SSTOU/Silver Bow Creek Remediation Funds is transferred to the UCFRB Restoration Fund.

#### 5.5 Guidance for Aquatic and Terrestrial Restoration in Priority 1 and 2 Areas

The identification of priority areas to focus future restoration efforts in the UCFRB will greatly contribute to meeting restoration goals and obtaining the greatest resource benefit from the dollars spent. Both prioritization documents emphasize, however, that identifying areas to focus fishery and wildlife protection and enhancement efforts does not constitute any predetermination of the merits of funding a particular project.<sup>21</sup> A proposed project in a priority area may or may not be a worthwhile funding prospect, depending on whether it appropriately and cost-effectively addresses the factors that adversely affect or limit the aquatic or terrestrial resources in that particular area.

Whether a project proposal effectuates the restoration goals specified in the Aquatic and Terrestrial Prioritization Plans will be a major factor in the State's decisions about what projects are included in the 2012 Aquatic and Terrestrial Restoration Plans for further development and implementation. Attachments 5-2 and 5-3 provide additional guidance about the types of aquatic

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<sup>20</sup> See p. 17 in the final Aquatic Prioritization Plan and p. 15 in the Terrestrial Prioritization Plan.

<sup>21</sup> See p. 16 in the Aquatic Prioritization Plan and p. 14 in the Terrestrial Prioritization Plan.



and terrestrial restoration projects, respectively, that are most likely to cost-effectively address restoration needs in priority areas.

Monitoring will be needed to ensure that projects achieve the desired restoration results. Monitoring needs will be determined during the project development phase. Monitoring can be included as a portion of individual projects, or designed separately to address the combined effects of several individual projects. The State will identify basin-wide monitoring needs in the restoration plans. Attachment 5-3 provides further guidance on terrestrial monitoring.

## 5.6 Guidance for Recreation Projects

In addition to project location restrictions identified in section 5.2 of this *Process Plan*, the *Long Range Guidance Plan* requires that recreational projects “offer additional natural resource benefits and not just recreational benefits.” This resource-benefit requirement for recreational projects is reflected in the attached project solicitation form (Attachment 5-1) and will be an important factor in the State’s determination of which recreation projects to include in the restoration plans.

Associated with the previously-administered grants process, the NRDP produced guidance in 2003 that generally describes types of recreational projects that would meet the legal threshold of restoring or replacing the same or substantially similar recreational services as those covered under Montana v. ARCO.<sup>22</sup> In general, recreational projects that will, in addition, offer resource benefits are those that would prevent resource degradation by the user public, or those that provide protection for a significant amount of high priority habitat, in addition to appropriately designed recreational access features. Attachment 5-4 provides additional guidance on recreational projects.

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<sup>22</sup> <http://doj.mt.gov/wp-content/uploads/2011/06/guidancerecreationalprojects.pdf>



## SECTION 6. LEGAL AND POLICY CRITERIA FOR DECISION MAKING

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Under the federal Superfund law, NRD settlement funds can only be spent to restore, replace, or acquire the equivalent of injured natural resources, and natural resource trustees must complete a restoration plan and consider public input before NRD settlement funds can be spent.<sup>23</sup> The restoration plan must specify how funds will be spent and include an evaluation of various restoration alternatives according to criteria specified in federal NRD regulations.<sup>24</sup> Attachment 6-1 provides copies of these regulations and the related provisions in federal Superfund law.

This section identifies and discusses the criteria the State will use to decide on the restoration plans, including early restoration, developed under the provisions of this *Process Plan*. There are eight legal criteria, seven of which represent the criteria set forth in the U.S. Department of the Interior's (DOI) NRD assessment regulations,<sup>25</sup> which Trustees are to use when selecting the restoration plan alternatives. The other legal criterion addresses the additional factors the State is to consider under a Memorandum of Agreement with the Confederated Salish and Kootenai Tribes and the DOI. In addition to these legal criteria, there are two policy criteria of special interest to the State.

The criteria descriptions provided below indicate the basis for how the State will qualitatively analyze restoration alternatives for each criterion. For less developed components of a restoration plan, the State will summarize what can be determined based on limited project information in its Aquatic and Terrestrial Restoration Plans. More detailed criteria evaluation will occur as part of the subsequent decision-making after the project is more fully developed.

### 6.1 Legal Criteria

Technical Feasibility: The State will evaluate the degree to which the restoration plan alternative employs well-known and accepted technologies and the likelihood that the alternative will achieve its objectives. Obviously, any alternative that is technologically infeasible will be rejected. However, the State may consider a restoration plan alternative that is innovative or that has some element of uncertainty as to its results. Different restoration plan alternatives could use different methodologies, with varying degrees of feasibility. Accordingly, application of this criterion will focus on an evaluation of the restoration plan alternatives relative technological feasibility.

Relationship of Expected Costs to Expected Benefits: The State will examine whether a restoration plan alternative's costs are commensurate with the benefits it provides. In doing so, the State will need to determine the costs associated with the restoration plan alternative, including costs other than those needed simply to implement the plan, and the benefits that would result from the plan. Application of this criterion is not a straight cost-benefit analysis,

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<sup>23</sup> 42 U.S.C. §9607 and §9611

<sup>24</sup> 43 CFR §11.93

<sup>25</sup> 43 CFR §11.82(d). These regulations provide a list of "factors" to consider when selecting the alternative to pursue; those factors are referred to as DOI legal criteria in this document.

nor does it establish a cost-benefit ratio that is by definition unacceptable. While it is possible to quantify costs, quantifying benefits is more difficult. Requiring a restoration plan alternative to meet some established cost-benefit ratio would likely result in the rejection of a restoration plan alternative because of the difficulty in quantifying the benefits to resources and services following implementation.

Cost-effectiveness: The State will evaluate whether the restoration plan alternative accomplishes its goal in the least costly way possible. To apply this criterion in a meaningful fashion, the State must consider all the benefits the restoration plan alternative would produce, not just cost; otherwise the focus would be too narrow. Consider, for example, a restoration plan alternative that would fully restore a given resource in a short period of time compared to another alternative that would restore the same resource at less cost but over a longer period of time. Considering only that the second alternative is less expensive than the first alternative ignores the benefits resulting from a relatively shorter recovery period. In this example, since an accelerated recovery time is a benefit, it would need to be factored into a determination of cost-effectiveness. In evaluating this criterion, the State will consider whether the restoration plan alternative is consistent with the guidance for aquatic and terrestrial restoration and recreation projects provided herein and in Attachments 5-2, 5-3, and 5-4, as well as the likelihood of matching funds, which can enhance cost-effectiveness.

Results of Response Actions: The State will consider the results or anticipated results of response actions underway, or anticipated, in the UCFRB. Numerous response actions are ongoing and additional response actions are scheduled to begin in the next several years, continuing for many years into the future. Application of this criterion will require the State to assess at an adequate level of detail, given the inherent uncertainties associated with this task, what response actions will entail in order to make projections as to their effects on resources and services. Consideration of response actions will occur in two principal contexts:

- The State will evaluate what is necessary in the way of restoration of resources and services in light of the ongoing and planned response actions.
- The State will evaluate the degree of consistency between the restoration plan alternative and a response action, looking at whether a project builds on a response action or, at the other end of the spectrum, seeks to undo a response action. The State will favor an alternative that does the former as opposed to the latter.

Adverse Environmental Impacts: The State will weigh whether, and to what degree, the restoration plan alternative will result in adverse impacts to both the physical and human environment. Specifically, the State will evaluate significant adverse impacts, which could arise from the restoration plan alternative, short- or long-term, direct or indirect, including those that involve resources that are not the focus of the project. To do so, the State must understand the dynamics of the restoration plan alternative and how it will interact with the physical and human environment. The attached checklist provided in Attachment 6-2 serves as a guide to what type

of impacts should be evaluated.<sup>26</sup> As part of its analysis of impacts to human health and safety, the State will determine if protective measures should be added to the restoration plan alternative to ensure safety.

Recovery Period and Potential for Natural Recovery: The State will evaluate the merits of the restoration plan alternative in light of whether the resource is able to recover naturally and, if a resource can recover naturally (i.e., without human intervention), how long that will take. This will place the restoration plan alternative's benefits in perspective by comparing the length of time it will take for the resource to recover if the alternative were implemented, with the length of time for natural recovery. (The term "recovery" refers to the time it will take an injured natural resource to recover to its "baseline," i.e., pre-injury condition.) If a resource will not recover without some action or if natural recovery will take a long time, a restoration action may very well be justified. Conversely, if a resource is expected to recover on its own in a short period of time, a restoration action may not be justified.

Federal, State, and Tribal Policies, Rules, and Laws: The State will consider the degree to which the restoration plan alternative is consistent with applicable policies of the State of Montana and applicable policies of the federal government and Tribes (to the extent the State is aware of those policies and believes them to be applicable and meritorious). In addition, projects must be implemented in compliance with applicable laws and rules, including the consent decrees. As part of the evaluation of this criterion, the State will assess whether the restoration plan alternative would potentially interfere, overlap, or partially overlap with the restoration work covered under current or planned consent decrees or restoration plans, which are identified in Attachment 6-3.

Resources of Special Interest to the Tribes and DOI: Pursuant to the State's Memorandum of Agreement (MOA) with the Department of Interior and Confederated Salish and Kootenai Tribes (Tribes), the State is to pay particular attention to natural resources of special interest to the Tribes and/or DOI, including attention to natural resources of special environmental, recreational, commercial, cultural, historic, or religious significance to either the Tribes or the United States.<sup>27</sup> The MOA also provides for the State to pay particular attention to "Tribal Cultural Resources" or "Tribal Religious Sites," as those terms are defined in the MOA.

## 6.2. Policy Criteria

Normal Government Functions: The State will not fund restoration activities for which a governmental agency would normally be responsible or that would receive funding in the normal course of events. With this criterion, the State will evaluate whether a particular restoration plan alternative would be implemented if recovered natural resource damages were not available. The

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<sup>26</sup> This checklist is standard checklist used by State of Montana agencies to evaluate impacts of proposed state action on the physical and human environment pursuant to the requirements of the Montana Environmental Policy Act (MEPA). This checklist covers to impacts to the environment and human health and safety required to be analyzed by two of the DOI NRD criteria (43 CFR §11.82), plus it covers additional impacts to the human environment required to be analyzed under MEPA (see a "Guide to the Montana Environmental Policy Act," prepared by the MT EQC, 2009).

<sup>27</sup> This MOA, dated November 1998, is available from the NRDP website at <http://doj.mt.gov/wp-content/uploads/2011/06/1998moatribes.pdf>.

Restoration Fund may be used to augment funds normally available to government agencies to perform a particular action if such cost sharing would result in the implementation of a restoration action that would not otherwise occur through normal agency function.

This criterion applies to all aquatic and terrestrial projects that are either covered under the Aquatic and Terrestrial Restoration Plan development process (Section 5) and the early restoration proposal process (Section 4). This criterion has already been evaluated for Groundwater Restoration Plans that are developed in accordance with Section 3 above; such plans acceptably augment normal government function.

Price: The State will evaluate whether the land, easements, water rights, or other property interests proposed to be acquired are being offered for sale at or below fair market value. Consideration of this criterion will likely require the State to conduct its own appraisal of the property. If the appraisal process for an acquisition was not subject of initial State review and approval, the State will, at a minimum, conduct a review appraisal and may conduct a full appraisal.

### 6.3. Analysis of Alternatives

Under the DOI NRD regulations, a Trustee's restoration plan needs to evaluate a reasonable number of alternatives for restoring, rehabilitating, replacing, or acquiring the equivalent of injured natural resources based on all relevant considerations, including the DOI legal criteria described under Section 6.1.<sup>28</sup> As explained above, as part of the development of a restoration plan, various restoration alternatives will be considered in selecting a preferred set of alternatives for the plan. This process began with the restoration planning efforts that occurred prior to adoption of the *Long Range Guidance Plan*. The State, through these efforts, has already considered many alternatives for restoration of the injured groundwater, aquatic, and terrestrial resources in the UCFRB. Some of these previous restoration plans that contain such alternative analyses are described in Attachment 6-4.

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<sup>28</sup> 43 CFR §11.93, §11.81, and §11.82.

## **SECTION 7. SPECIAL PROJECTS AND EXCESS SSTOU/SBC REMEDIATION FUNDS**

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This Section describes the funding process for approved special projects and the future funding process associated with any excess money made available from the Streamside Tailings Operable Unit (SSTOU) Fund, which currently funds the remediation of Silver Bow Creek (SBC). Section 7.1 addresses the approved Silver Bow Creek Greenway project. Section 7.2 addresses the Clark Fork Watershed Education Program. Section 7.3 addresses the excess SSTOU/SBC remediation funds.

### 7.1 Silver Bow Creek Greenway Project

The Silver Bow Creek Greenway project entails the restoration of aquatic, riparian/wetland, and upland ecosystems within, and the development of a passive recreational trail along the entire Silver Bow Creek stream corridor in coordination with remedial actions being conducted by DEQ. Previously through the annual grant process, the seven Greenway grant projects were approved for a total for \$15.6 million. Of that approved amount, \$9.8 million has been expended through October 1, 2011 and \$5.7 million remains to be spent.

In addition to this approved grant funding, the *Long Range Guidance Plan* specified that up to a maximum of an additional \$8 million “be encumbered and dedicated to the Greenway project to fund restoration activities that include ecological and recreational access features to be completed in coordination with remediation activities.” The Greenway Service District has provided the attached list of additional restoration features that would be funded through the additional allocation (Attachment 7-1). Similar to how the past approved Greenway funds were categorized in the *Long Range Guidance Plan*, 60% of these future Greenway expenditures would come from the Aquatic Priority Account and 40% would come from the Terrestrial Priority Account. Since this \$8 million limit has been approved, it is handled as an encumbered fund, similar to approved past grant projects, as further detailed in Section 8.1. Unless the Greenway seeks substantive changes in the scope of the project, the project should not be subject to any additional reviews or approvals.

In 2010, the Governor approved consolidation of all seven approved Greenway grants into one grant agreement. When the Greenway Service District needs the additional funding provided for in the *Long Range Guidance Plan*, the State will modify this consolidated agreement to cover this additional funding and the activities to be completed with that funding. Similar to existing contract terms, expenses will be handled on a reimbursement basis following submittal of invoices with proper documentation and a progress report.

As set forth in the *Long Range Guidance Plan*, this \$8 million set-aside for the Greenway will be initially funded out of the UCFRB Restoration Fund, which shall be reimbursed from the SSTOU/SBC Excess Funds Reserve when funding from that account becomes available. Of the total amount reimbursed, 60% would be transferred to the Aquatic Priority Account and 40% would be transferred to the Terrestrial Priority Account. Section 7.3 further explains how this reserve account will be handled.

## 7.2 Clark Fork Watershed Education Program

The *Long Range Guidance Plan* confines future funding for education projects to the Clark Fork Watershed Education Program (CFWEP). Since 2007, CFWEP has been administering to schools within the UCFRB and Missoula by Montana Tech, and funded as a contracted service to the NRDP. Past funding of CFWEP was subject of annual budget approvals by the TRC. In July 2011, the TRC approved the CFWEP scope of work and budget for the 2011/12 school year in the amount of \$379,434. This budget included \$248,684 for the CFWEP Base Level education program serving middle schools in the UCFRB from Butte to Bonner; \$38,554 for the Milltown Education Program targeted to Missoula area schools; and \$92,196 for the Avian Science Center's summer camp component of CFWEP. This approved budget is in effect through June 30, 2012.

The *Long Range Guidance Plan* further specifies that the CFWEP budget be "considered by the NRDP and Advisory Council and approved by the TRC on a biennial basis in each even numbered year." In June 2012, the TRC will consider for approval CFWEP's proposed budget and scope of activities for fiscal year 2013 and 2014. The NRDP and Advisory Council will provide input to the TRC on the CFWEP's proposal. As part of its approval process, the TRC will continue to consider the milestones achieved during the previous year.

As specified in the *Long Range Guidance Plan*, future costs for CFWEP will be divided proportionately by resource category, with 36% from the groundwater resource account, 39% for the aquatic priority account, and 25% from the terrestrial priority account. Section 8.1 describes how these costs will be tracked and allocated.

## 7.3 SSTOU/SBC Excess Funds Reserve

Consistent with the *Long Range Guidance Plan*, should there be any unexpended money in the SSTOU/SBC Remediation Fund, that excess will be transferred to the general UCFRB Restoration Fund and allocated to a reserve fund for specific projects to be determined based on the overall status of the restoration of resources and services within the Upper Clark Fork River drainage at and above Deer Lodge, with the Cottonwood Creek drainage being the northern boundary, including the Silver Bow Creek and Warm Springs Creek drainages. Future distribution from this reserve of restoration funds should be designated for additional unfunded restoration of aquatic and terrestrial resources in these upstream areas, keeping in mind the allocation priorities set forth in the *Long Range Guidance Plan* and, particularly, the Aquatic and Terrestrial Prioritization Plans, and the recognition that the UCFRB areas at and upstream of Deer Lodge are the most severely injured.

The Montana Department of Environmental Quality (DEQ), which is leading the Silver Bow Creek remediation effort, anticipates that major remediation construction activities will be completed by 2014.<sup>29</sup> Following that, the State will determine what unexpended money would be available for transfer to the UCFRB Restoration Fund, after taking into consideration the funds needed for future remediation operation and maintenance and monitoring needs. Pursuant to the 1999 Consent Decree for the Streamside Tailings Operable Unit, which provides for Silver

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<sup>29</sup> Based on input provided by Joel Chavez of DEQ to Greg Mullen in January 2012.



Bow Creek remediation, the State's determination of what amount can be transferred to the UCFRB Restoration Fund is subject of approval by the U.S. Environmental Protection Agency.

The State will defer developing a restoration plan specific to the expenditure of these excess remediation funds until the amount to be transferred to the UCFRB Restoration Fund is known. This future plan would be subject of the standard restoration planning review and approval process specified in Section 2. The reimbursement provisions in the *Long Range Guidance Plan* for the Silver Bow Creek Greenway project described in Section 7.1 above would take first priority over any other expenditure of these excess remediation funds. The transfer of the excess amount to the UCFRB Restoration Fund would also trigger an associated update/revision to the Aquatic and Terrestrial Restoration Plans.



**SECTION 8. FUND ACCOUNTING, REPORTING, AND PROGRAM ADMINISTRATION**

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This section describes fund allocation, accounting, and reporting procedures, including program administration accounting procedures.

**8.1 Procedure for Allocation of UCFRB Restoration Fund and Reporting**

The following procedure will be utilized to allocate and track funds. This method will: 1) optimize the amount of interest earned on the overall UCFRB Restoration Fund, thereby providing the most interest earning to the allocated categories; 2) separate and track the resource allocation categories by using an Organizational Code (ORG) tracking system; and 3) calculate and allocate interest earned to each category.

An individual ORG number will be assigned and used to track all expenses for each resource category account. The interest earned on the overall UCFRB Restoration Fund will then be divided proportionately among these accounts at the end of a predetermined period, most likely at fiscal year-end. An investment strategy would be established that would account for when and how much money is expected to be spent. Trust Fund Investment Pool (TFIP) units can be sold and placed into the Short Term Investment Pool (STIP) to cover anticipated short term expenditures and to maintain a set amount in STIP. In consultation with the Board of Investments, it was determined that this method of allocation and interest tracking would earn more interest than an alternative method of dividing up the UCFRB Restoration Fund into separate funds that would have separate fund investment strategies.<sup>30</sup>

Prior to the UCFRB Restoration Fund being allocated into the six main resource categories of funding, the following encumbered funds will be deducted from the amount of total amount of the UCFRB Restoration Fund that can be allocated for funding future projects.

Major Encumbered Funds as of 12/31/11 <sup>31</sup>	
• Grant Projects	(\$23,878,012.37)
• DOI wetlands enhancement	(\$ 2,417,669.46)
• Milltown	(\$ 1,074,608.61)
• Silver Bow Creek Greenway	(\$ 8,000,000.00)
<b>TOTAL ENCUMBERED FUNDS<sup>32</sup></b>	<b>(\$35,370,290.37)</b>

<sup>30</sup> This fund split alternative would earn less interest because more money would have to be taken out of the TFIP and invested in the STIP for each of the individual funds. Currently, the STIP earns substantially less interest than the TFIP (.25% vs. 4.5% as of December 2011).

<sup>31</sup> This estimate of encumbered funds for site-specific projects includes the remaining budget for approved grant projects, the amount remaining of the \$3.2M allocated for DOI wetland enhancement in the 1998 Consent Decree, remaining budget of the \$2M allocated in 2011 to complete the State’s Milltown restoration project., and the \$8M allocated by the *Long Range Guidance Plan* to the Silver Bow Creek Greenway project. It does not include the remaining budget of non-grant, programmatic projects, such as CFWEP.

<sup>32</sup> These amounts are as of 12/31/11. Prior to the official allocation of funds, these numbers will be updated.

Further detail on the funding status for all past approved grants as of 12/31/11 is available from the NRDP website.<sup>33</sup> Once the encumbered funds are deducted, the remaining balance will be allocated as follows, after taking into consideration funds for all past project categorized by resource as identified in Attachment C of the *Long Range Guidance Plan*:

- 36% Groundwater Resources and Services
  - Of that 36%, 75% will be allocated to Butte Groundwater Account
  - Of that 36%, 25% Anaconda Groundwater Account
  
- 39% Aquatic Resources and Services
  - Of that 39%, 85% will be allocated to Aquatic Priority Account
  - Of that 39%, 15% will be allocated to Aquatic Reserve Account
  
- 25% Terrestrial Resources and Services
  - Of that 25%, 85% will be allocated to Terrestrial Priority Account
  - Of that 25%, 15% will be allocated to Terrestrial Reserve Account

Once the budgets for the categories are established, the beginning balance in each resource category account will be noted. The account estimates provided in Section 3 for groundwater resources and Section 5 for aquatic and terrestrial resources are based on expenditures through 12/31/11, taking past approved projects into consideration in determining future budgets according to the above percentages. All expenses for each category will then be tracked by individual ORG numbers. These expenses are tracked by the State's SABHRS system and will be reported quarterly. Expenses to date reports can be requested at any time. As in the past, the NRDP will provide the UCFRB Restoration Fund Balance Report quarterly.

An internal tracking system will be established to calculate and track interest earned for all resource categories. At fiscal year end, the interest for the UCFRB Restoration Fund will be calculated and allocated in each resource category account based on the fund balance for each account and what percentage of those funds makes up the total of the STIP and TFIP. The following assumptions will be made in calculating the interest: 1) the expected expenditures for a year will be invested in STIP; 2) all expected expenditures for future years' expenses will be invested in TFIP; 3) TFIP units will be sold throughout the year to maintain a predetermined balance in STIP;<sup>34</sup> and 4) each resource fund will receive its proportionate earnings from STIP and TFIP. Interest will only be divided between the six resource categories. Interest earnings will be indicated as revenue and will be added to the fund balance for each resource category account. The other ORG units that involve encumbered funds, such as grant projects and the DOI wetlands or Milltown accounts, will not be allocated interest earnings.

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<sup>33</sup> Fund reports are available at: <https://doj.mt.gov/lands/funded-restoration-projects/>.

<sup>34</sup> The balance will be determined by the expected expenditures for one year.

## 8.2 Program Administration Costs

Programmatic expenses, such as general administration, will be divided according to the proportions specified in the *Long Range Guidance Plan* (36% groundwater, 39% aquatic, 25% terrestrial). These costs will be allocated to a specific ORG number throughout the year and then deducted from the resource category accounts at fiscal year-end on internal tracking reports. Costs for the NRDP's contracted educational service program, CFWEP, will be allocated and tracked similarly. Administrative costs specific to a resource category will be funded out of the money that has been allocated to that category. Monitoring will also be charged to the appropriate resource category account. For example, the on-going trout movement study costs will be charged to the Aquatic Priority Account ORG.

In accordance with the *Long Range Guidance Plan*, a budget for the NRDP's general administrative costs will be prepared and submitted for approval by the TRC on a biennial basis in June of the even numbered fiscal years. The administrative program budget for FY13 and FY14 will be submitted for TRC approval in June 2012.



Figure 1-1: Map of the Upper Clark Fork River Basin

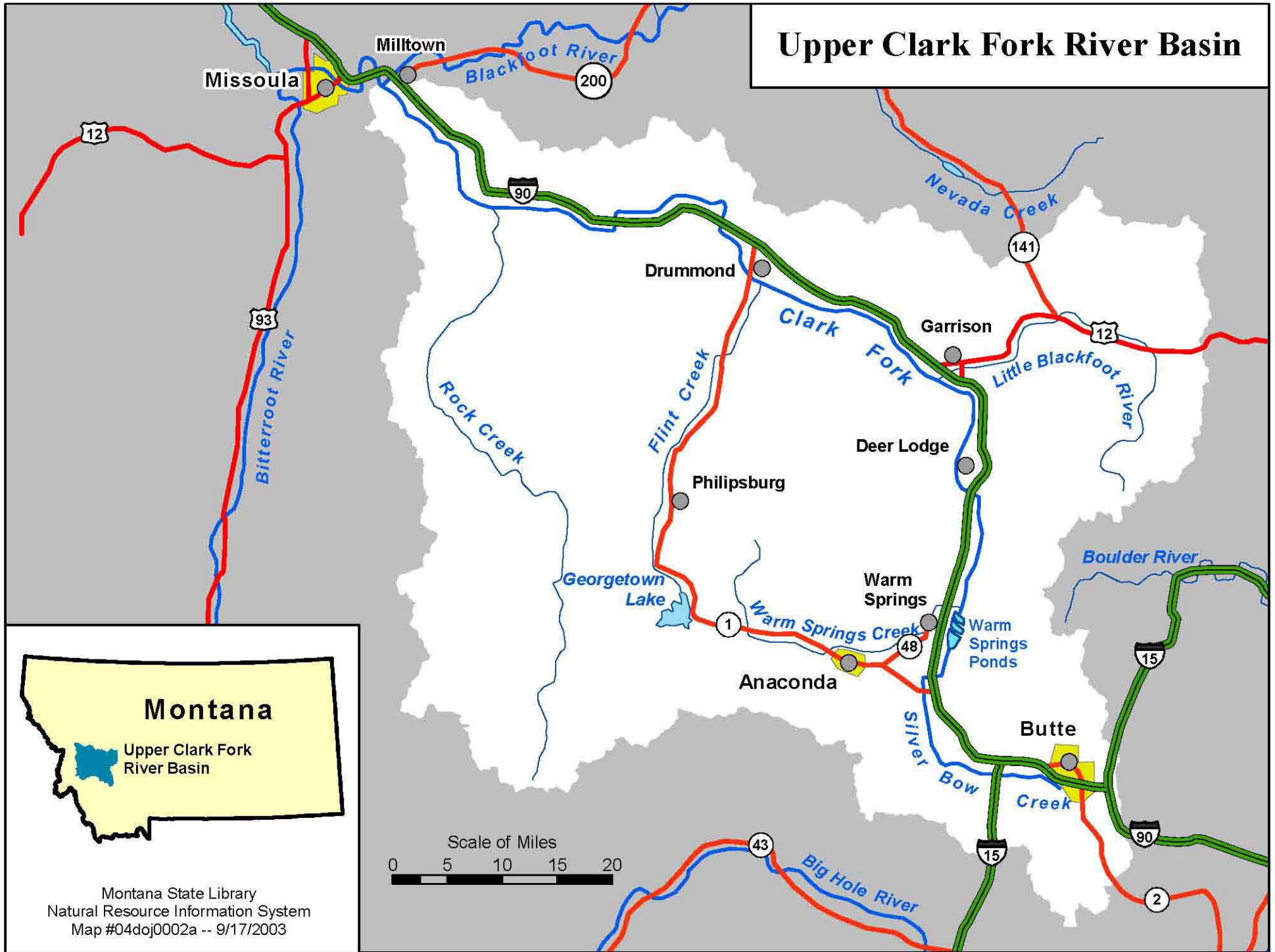
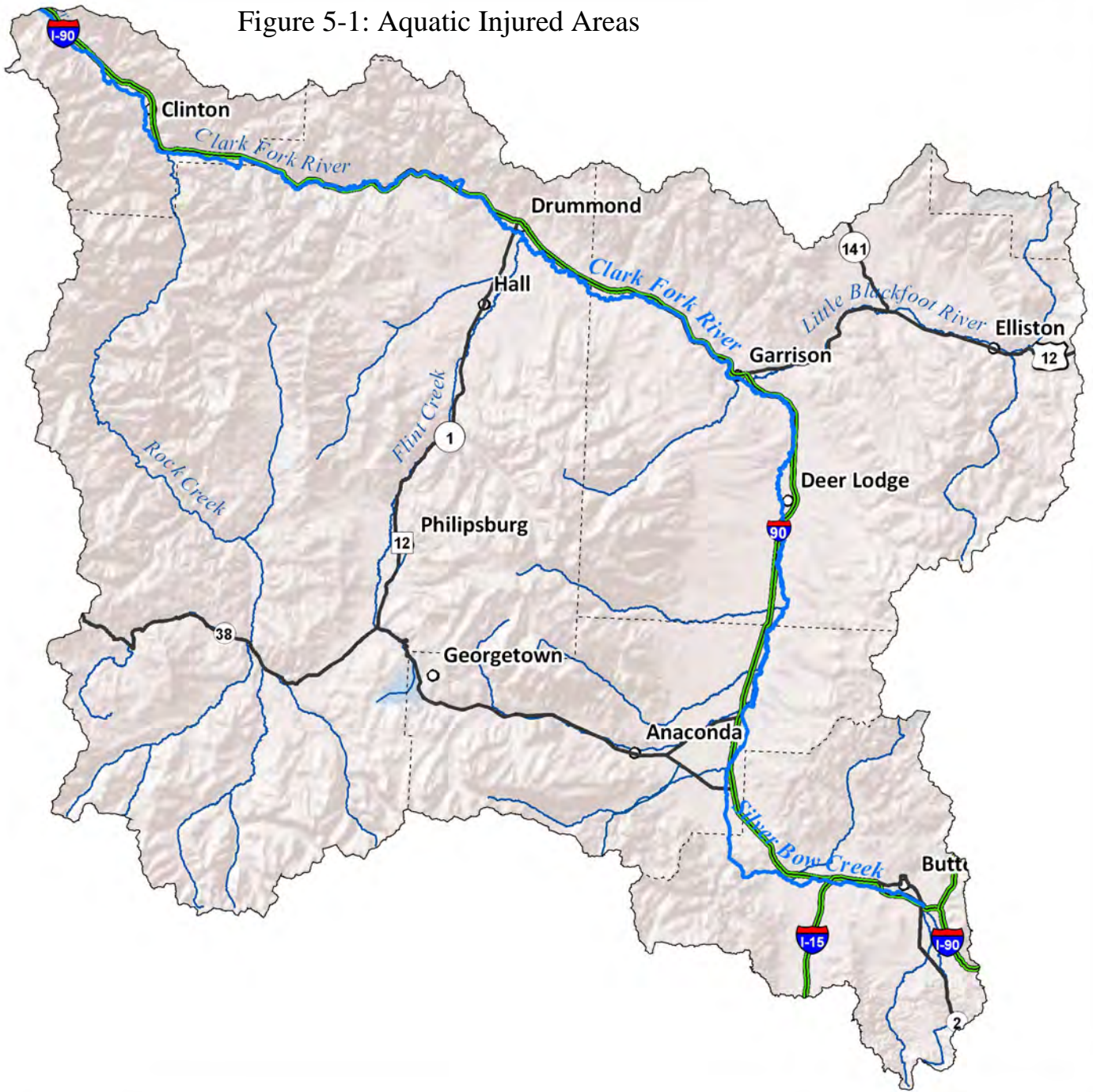




Figure 5-1: Aquatic Injured Areas



- Towns
- ~ Rivers & Streams
- ~ Interstate
- ~ US or State Highway
- - - County Boundaries
- ~ Aquatic Injured Areas





Figure 5-2. Aquatic Restoration Priority Areas

# Priority Areas in the Upper Clark Fork River Basin

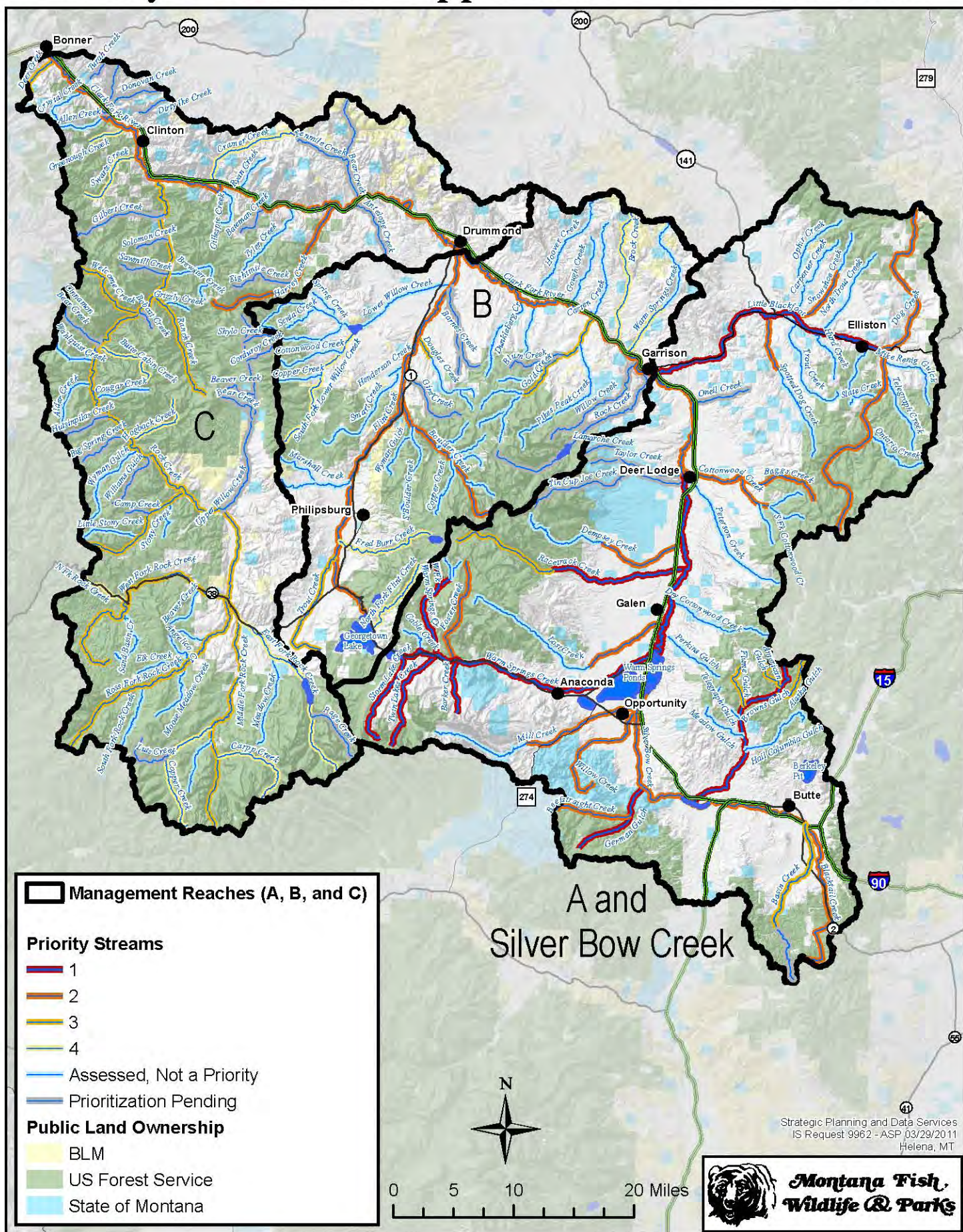




Figure 5-3. Priority areas for terrestrial wildlife replacement and restoration in the UCFRB

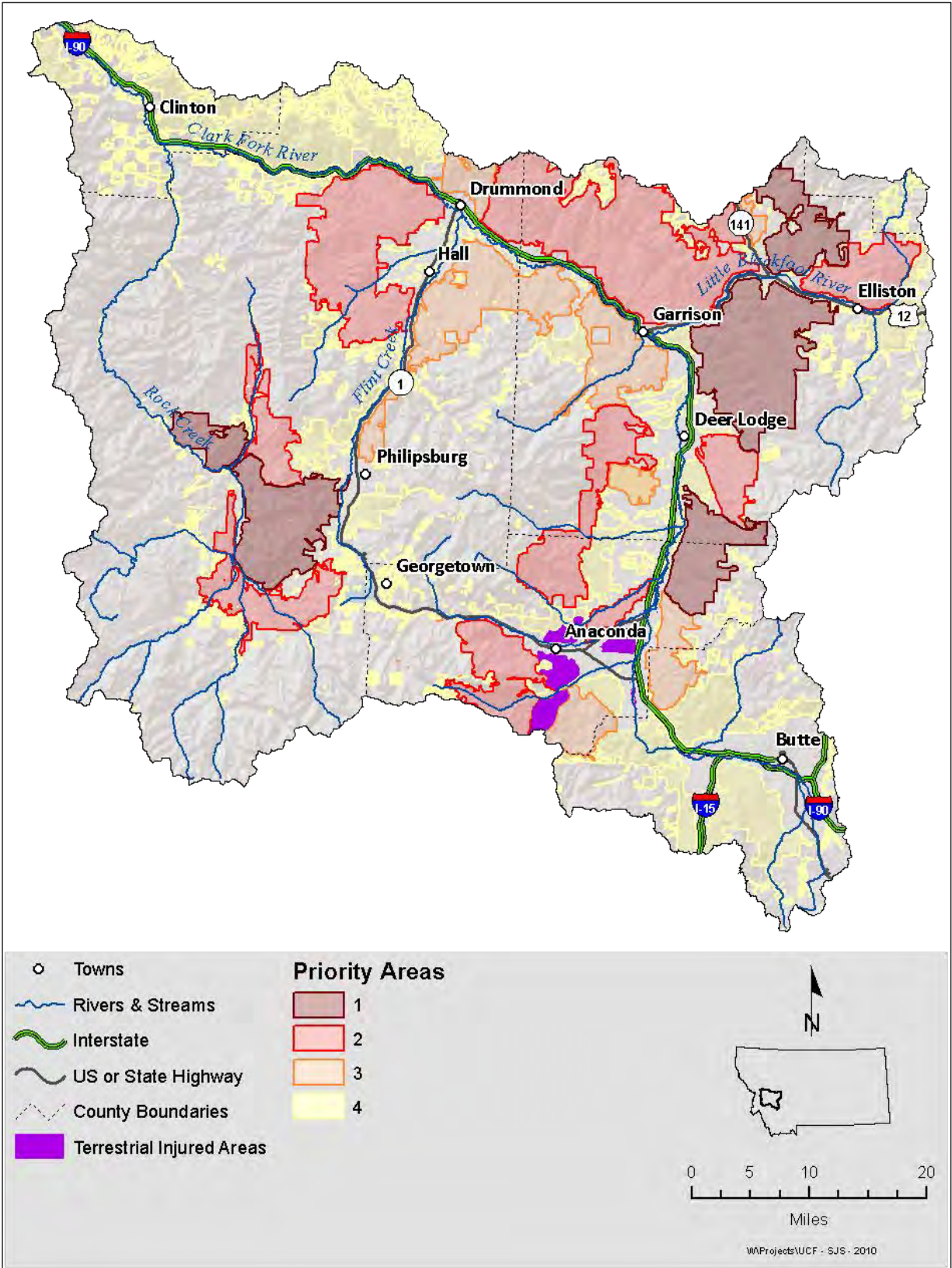
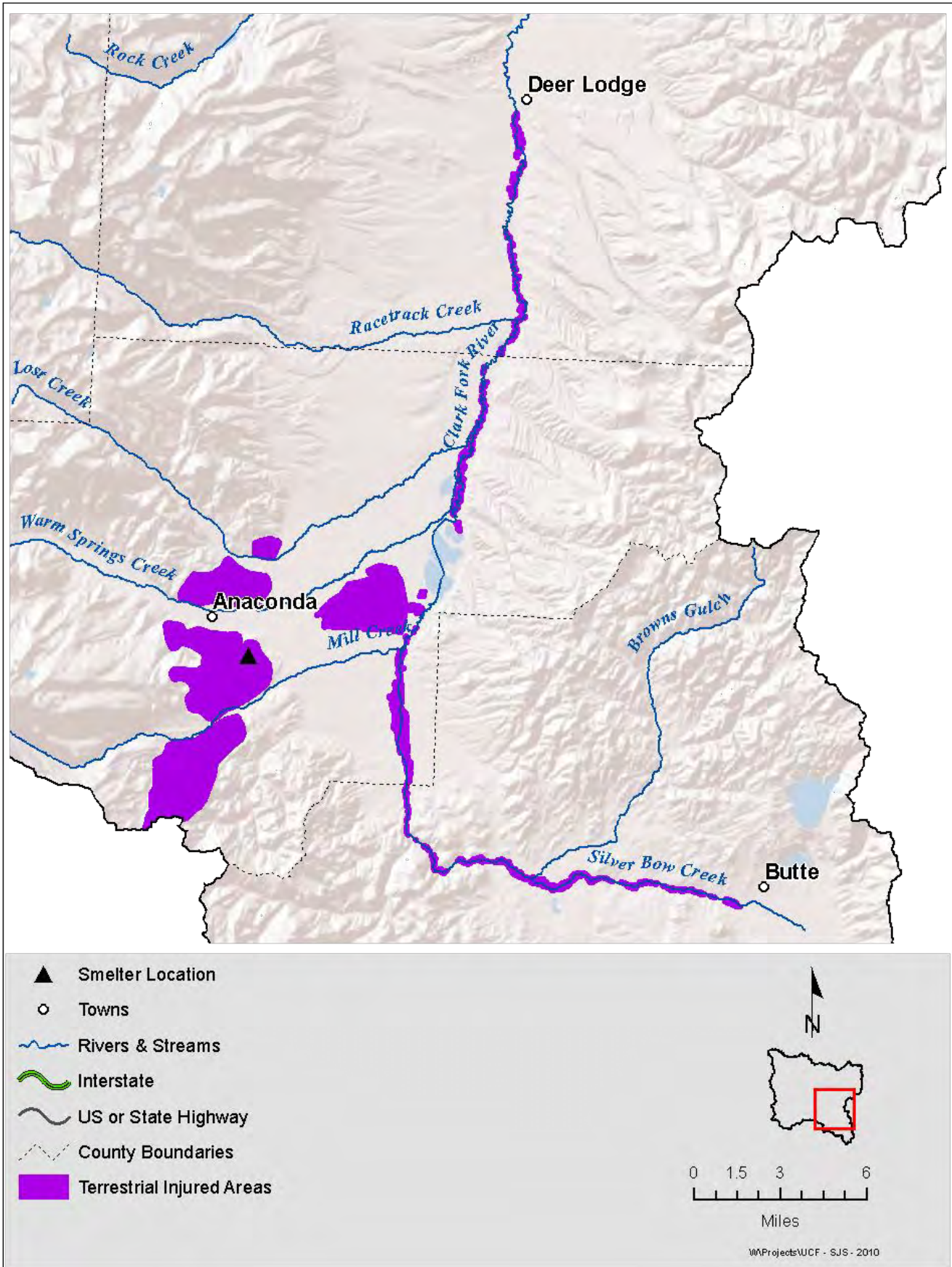


Figure 5-4. Terrestrial Injured Areas





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**2011 FINAL  
UPPER CLARK FORK RIVER BASIN  
LONG RANGE PRIORITIES AND FUND  
ALLOCATION GUIDANCE PLAN**

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

**DECEMBER 2011**

**I hereby approve of this 11-8-11 proposed final document, along with the associated proposed final aquatic and terrestrial prioritization plans referenced therein:**

  
Governor Brian Schweitzer

12/22/2011  
Date



## Upper Clark Fork River Basin Trustee Restoration Council Long Range Restoration Priorities and Fund Allocation Guidance Plan<sup>1</sup>

- **Upper Clark Fork River Basin Restoration Priorities and Fund Allocations**

Based on the definitions set forth in the UCFRB Restoration Plan Procedures and Criteria document, the three primary categories of injuries to natural resources and to the services they provide are set forth as follows:

1. Groundwater resources and the “[s]ervices provided to human beings by groundwater, including domestic and industrial consumption and use, irrigation, and waste disposal and assimilation.”
2. Terrestrial resources and the “[s]ervices provided by soils, vegetation, wildlife habitat, and wildlife, including the many activities that revolve around them, such as hunting, bird watching, wildlife photography, hiking, and general recreation.”
3. Aquatic resources and the “[s]ervices provided by surface water and aquatic resources, including such activities as fishing, hunting, floating, and general recreation.”

The Upper Clark Fork River Basin Restoration Fund to be allocated among the three resource categories is the settlement corpus of \$108 million plus interest that has accrued to the corpus since April 6, 1998 (Attachment A). Funds for all past approved projects are categorized on Attachment C and included in the percentages of funds allocated to each category of restoration project described below.

Based on the claims made in the 1983 Natural Resource Damage lawsuit (*State of Montana v. ARCO*) and in the settlement of those claims through the 1999 Consent Decree, the Council therefore recommends adoption of the following restoration and funding allocation percentages (Attachment D):

- 36% for injuries to groundwater and groundwater services,
- 39% for injuries to aquatic resources and aquatic services, and
- 25% for injuries to terrestrial resources and terrestrial services.

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<sup>1</sup> This document is, in large part, based on the 12/15/10 “Resolution by the Upper Clark Fork River Basin Remediation and Restoration 2010 Advisory Council for Adoption of a Long Range Restoration Priorities and Fund Allocation Guidance Plan.”



- **Groundwater restoration funding process**

Because the loss of services resulting from the permanent injuries to the Butte Hill and Anaconda area groundwater resources cannot be restored under any known and practical, technically feasible method, the Council recognizes that the restoration of lost groundwater services will have to occur through the replacement of these lost groundwater resources and services.

The Council recommends that future funding for groundwater restoration be divided between Butte-Silver Bow and Anaconda-Deer Lodge Counties according to the following percentages – Butte-Silver Bow 75% and Anaconda-Deer Lodge 25%.

To implement future funding for groundwater resources, the Council recommends that NRDP staff develop for Advisory Council and Trustee Council consideration and Trustee approval a stream-lined, non-grant process for the approval and implementation of future water system improvement projects. The Council intends that this process entail each local government develop for itself and submit to Natural Resource Damage Program staff a detailed proposal for how and when they would spend their allocations over a period not to exceed 20 years on water-system improvement projects consistent with the priorities set forth in their respective master plans.

This proposal is based upon the plans and priorities articulated in the Butte-Silver Bow and Anaconda-Deer Lodge water system master plans approved in compliance with all applicable federal and state laws.

The Counties would then implement their proposal following consideration by the NRDP, the Advisory Council, the Trustee Restoration Council, and the general public, and final approval by the Trustee. Implementation would include necessary oversight and review by NRDP, with funds distributed on a reimbursement basis.

- **Aquatic and terrestrial restoration funding process**

The Council recommends that future aquatic and terrestrial projects be proposed, reviewed, and funded subject to similar review steps as presently exist (i.e. consideration by the NRDP, Advisory Council, Trustee Restoration Council, and the general public, and final approval by the Trustee). The Council recognizes that NRDP staff will develop, within 2 months' time of the approval of this plan by the Trustee, a more specific planning process for Trustee consideration and approval that may include additional policies and practices deemed necessary to develop restoration plans for aquatic and terrestrial resources and to fully comply with federal and state law regarding restoration planning.

Within these two categories, funding decisions and priorities should be guided by sound scientific information including, but not limited to, 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. In addition to the priority areas identified in the above-referenced plans, all of the aquatic and terrestrial injured resource areas from Butte to and including Milltown for which the State made restoration claims are also considered priority areas that are also eligible for allocation of the aquatic and terrestrial priority funds.

Further, 15% of the funds allocated to the aquatic and terrestrial restoration categories shall be set aside as a reserve fund and will be ineligible for expenditure until such time as aquatic and terrestrial priority funds have been exhausted.

Up to a maximum additional \$8 million will be encumbered and dedicated to the Silver Bow Creek Greenway project to fund restoration activities that include ecological and recreational access features to be completed in coordination with remediation activities. This set-aside is indicated under the “Encumbered UCFRB RFs” and will be initially funded out of the UCFRB RF, which shall be paid back to the UCFRB RF from the Silver Bow Creek Reserve Remediation Reserve, referenced herein and shown in Attachment D, when and if it becomes available.

- **Funding recreational projects**

With respect to aquatic and terrestrial recreational services, the 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 the aquatic and terrestrial injured resource areas for which the State made restoration claims or in the priority areas identified in the State’s aquatic and terrestrial priority plans referenced above and only if such projects offer additional natural resource restoration benefits and not just recreational benefits. Such projects, which provide replacement of lost recreational services and additional natural resource benefits, are allowable restoration activities and funding of them would come from the either aquatic or terrestrial funds based on the proportion of the project costs attributable to aquatic or terrestrial restoration.

- **Funding educational projects**

The Council supports education specific to the restoration of injured resources in the Upper Clark Fork River Basin and recommends that future education funding be confined to the Clark Fork Watershed Education Program. The Council recommends funding this with administrative NRDP funds, with the budget considered by the NRDP and Advisory Council and approved by

the Trustee Restoration Council on a biennial basis in each even numbered year. This recognizes CFWEP's long-term sustainability goal that emphasizes incorporation of educational materials into school curriculums. Education costs would be divided proportionately by resource category as indicated above (36% groundwater, 39% aquatic, and 25% terrestrial).

Educational signage related to restoration of natural resources in the Basin would be an eligible component of the aquatic, terrestrial, or recreational projects that are eligible for funding under this Plan.

- **SSTOU Remediation Fund Reminders (commonly referred to as Silver Bow Creek)**

The Council recommends that in the future, should there be any unexpended money from the SSTOU/SBC remediation fund, that it be returned to the general Upper Clark Fork River Basin Restoration Fund and allocated to a reserve fund for specific projects to be determined based on the overall status of the restoration of resources and services within the Upper Clark Fork River drainage at and above Deer Lodge, with the Cottonwood Creek drainage being the northern boundary, including Silver Bow Creek and Warm Springs Creek drainages. Future distribution from this reserve of restoration funds should be designated for additional, unfunded, restoration of aquatic and terrestrial resources in these upstream areas, keeping in mind the allocation priorities set forth herein and, particularly, the Prioritization Plans, and the recognition that the UCFRB areas at and upstream of Deer Lodge are the most severely injured.

- **Administrative costs**

For costs specific to the UCFRB Restoration Fund, the Council recommends that NRDP administrative costs specific to a resource category be funded out of the money that has been allocated to that category, or, in the case of general costs that are not specific to a resource category, be divided among the three allocation categories according to the percentage identified above. For example, the NRDP's costs in reviewing the county proposals and reviewing invoices for approved groundwater projects would come from the 36% of funds allocated for groundwater restoration, with a similar allocation for aquatic or terrestrial review work from the aquatic and terrestrial percentages of allocated funds, respectively. General costs would be divided, with 36% to the groundwater allocation, 39% to the aquatic allocation, and 25% to the terrestrial allocation.

The NRDP will prepare and present a biennial budget for administration costs associated with this guidance plan to the Trustee for approval in each even numbered year.

- **Monitoring and Maintenance**

Projects funded through the funds allocated for groundwater, aquatic, or terrestrial resource restoration will have project-specific monitoring and maintenance needs. Any needed

monitoring at a broader, programmatic level can be charged to the appropriate resource allocation category.

- **Time Frame**

Due to the extent and severity of the injury to resources and services of the Basin and the critical need now to guide present and future expenditures from the Upper Clark Fork River Basin Restoration Fund, The Restoration Priorities and Fund Allocation Guidance Plan set forth herein should govern all expenditures from this Fund from this point forward and is expected to continue for the next twenty (20) years.

However, the Trustee Restoration Council recognizes the need to continue restoring lost aquatic and terrestrial resources and therefore will entertain early restoration proposals during calendar year 2012. Such early restoration proposals must be located in the aquatic and terrestrial injured resource areas for which the State made restoration claims or in the priority areas identified in the State's aquatic and terrestrial priority plans referenced above. After this date, funding for restoration proposals will be guided solely by a more specific restoration plan which will be prepared by NRDP staff and that will develop, evaluate, and make recommendations for future funding of projects and programs to fulfill the requirements of federal and state law. That more specific plan will be considered and recommended by the Advisory Council and the Trustee Restoration Council, after comment and input from the public, and then, if acceptable, approved by the Governor.

A review of expenditures and projects to ensure accountability and efficient and effective use of the Upper Clark Fork River Basin Restoration Fund should be conducted at least every five years. Such a review should include an evaluation of the timing of remedy and restoration.

**Attachments used as basis for this document**

Attachment A = UCFRB Restoration Fund Status

Attachment B = Deleted during review process

Attachment C=UCFRB Restoration Funds Granted and Proposed

Attachment D= UCFRB Funding Flow Chart

<b>1st Quarter FY12 UCFRB Restoration Fund Summary</b>			
<b>As of 10/1/11</b>			
		<b>Book Value</b>	<b>Market Value</b>
A	FYE11 Fund Balance	\$138,019,768.44	\$147,404,341.41
B	FY12 Interest (as of 10/1/11)	\$1,373,587.06	\$1,373,587.06
C	FY12 Expenses (as of 10/1/11)	(\$1,018,224.00)	(\$1,018,224.00)
D	FY12 Market Adjustment	Not Applicable	Done at Fiscal Year End
E	Fund Balance (A+B-C)	\$138,375,131.50	\$147,759,704.47
<b>Additional Fiscal Projections Based on Assumptions</b>			
	Major Encumbered Funds <sup>1</sup> Approved but not spent as of 10/1/11	Total (\$31,274,117.50)	Total (\$31,274,117.50)
	<ul style="list-style-type: none"> <li>• Grant Projects</li> <li>• Dutchman</li> <li>• Milltown</li> </ul>	(\$26,948,009.45) (\$2,421,766.29) (\$1,904,341.76)	(\$26,948,009.45) (\$2,421,766.29) (\$1,904,341.76)
F			
G	Estimated Fund Balance minus major encumbered funds (E-F)	\$107,101,014.00	\$116,485,586.97

<sup>1</sup> This estimate of encumbered funds for site-specific projects includes the remaining budget for approved grant projects, the amount remaining of the \$3.2 million allocated for wetland enhancement in the 1998 Consent Decree that is being used for the Dutchman project, and remaining budget of the \$2 million allocated in 2011 to complete the State's Milltown restoration project. It does not include the remaining budget of non-grant, programmatic projects, such as the Clark Fork Watershed Education Program.

# Attachment C

## UCFRB Restoration Funds Granted (as per the December 2011 Final Long Range Guidance Plan)<sup>1</sup>

### A. Approved Restoration Grant Funded Projects funded by UCFRB Restoration Fund

Groundwater		Aquatic		Terrestrial	
Anaconda Water Studies	\$107,771	Antelope/Wood Creek Revegetation	\$10,000	Big Butte Acquisition	\$687,842
Anaconda Waterline	\$13,598,044	Bighorn Reach A Revegetation (50%)	\$55,400	Bighorn Reach A Revegetation (50%)	\$55,400
Basin Creek Dam Rehabilitation	\$503,006	Bird's Eye View Education Project (50%)	\$62,498	Bird's Eye View Education Project (50%)	\$62,498
Big Hole Diversion Dam	\$3,714,833	Bonner Pedestrian Bridge	\$975,652	Blue Eyed Nellie Moore Acquisition	\$142,500
Big Hole Pump Station	\$3,500,000	Browns Gulch Assessment	\$143,404	Butte Nursery	\$628,175
Big Hole Transmission Line Replacement	\$8,721,882	Browns Gulch Education PDG	\$17,602	Clark Fork Ed. Program (33.3%)	\$240,350
Ramsay School (33.3%)	\$5,384	Butte Fishing Pond/Open Space	\$1,225,000	Developing Tolerant Seed (Bridger)	\$672,644
Butte Master Plan	\$174,634	Clark Fork Ed. Program (33.3%)	\$240,350	Duhamme Acquisition	\$1,668,557
Butte Metering	\$273,600	Cottonwood Creek Flow	\$380,024	East Deer Lodge Valley	\$544,751
Butte Waterline	\$17,414,083	Douglas Creek PDG	\$35,000	German Gulch (50%)	\$462,856
Clark Fork Ed. Program (33.3%)	\$240,351	Dry Cottonwood Creek Ranch	\$23,150	Haefner PDG (20%)	\$4,950
High Service Tank Replacement	\$1,192,802	East Fork Rock Creek Fish Passage	\$370,000	Limestone Ridge PDG	\$22,589
Milltown Education PDG (33.3%)	\$7,971	Flint Creek PDG	\$7,000	Manley Ranch Cons. Easement	\$608,048
Opportunity Groundwater PDG	\$309,268	Garrison Trails Project	\$24,974	Maud S Canyon Trails	\$62,040
U of M Database Planning (33.3%)	\$3,183	Georgetown Lake Study	\$114,985	Milltown Education PDG (33.3%)	\$7,971
		German Gulch (1/2)	\$462,856	Milltown/Two Rivers Rec. Facilities (50%)	\$1,331,875
		Haefner PDG (80%)	\$19,800	Osprey Project	\$25,000
		Johnson/Cottonwood Creek Trail	\$633,015	Otter Distribution	\$26,457
		Little Blackfoot River PDGs	\$50,000	Paracini Ponds Acquisition (20%)	\$236,841
		Lost Creek Watershed	\$518,382	Peterson Ranch Conservation Easement	\$334,125
		Lower Browns Gulch Instream Flow PDG	\$25,000	Ramsay School (33.3%)	\$5,384
		Lower Little Blackfoot Flow Study PDG	\$25,000	Silver Bow Creek Greenway (40%)	\$6,225,970
		Madsen Easement PDG	\$25,000	Stuart Mill Bay Acquisition (50%)	\$1,000,000
		Middle Little Blackfoot Flow Study PDG	\$25,000	Stucky Ridge/Jamison Conservancy	\$265,335
		Milltown Acquisition	\$595,628	Thompson Park Improvement Project	\$988,402
		Milltown Bridge Pier & Log Removal	\$262,177	U of M Database Planning (33.3%)	\$3,183
		Milltown Education PDG (33.3%)	\$7,971	Vanisko Conservation Easement PDG	\$20,140
		Milltown Sediment Removal Project	\$2,819,072	Washoe Park PDG (20%)	\$5,000
		Milltown/Two Rivers Rec. Facilities (50%)	\$1,331,875	Watershed Land Acquisition	\$5,831,904
		Myers Dam Diversion PDG	\$11,710	Z-4 Conservation Easement	\$10,000
		Paracini Ponds PDG	\$17,700	Spotted Dog (60%)	\$9,944,405
		Paracini Ponds Acquisition (80%)	\$947,364		
		Racetrack Lake	\$500,000		
		Ramsay School (33.3%)	\$5,384		
		Silver Bow Creek Greenway (60%)	\$9,338,954		
		Stuart Mill Bay Acquisition (50%)	\$1,000,000		
		TU Instream Flow Protection	\$25,000		
		Twin Lakes Diversion PDG	\$11,056		
		U of M Database Planning (33.3%)	\$3,183		
		Upper Little Blackfoot River Project	\$216,044		
		Upper Willow Creek Restoration	\$307,758		
		Warm Springs Ponds Rec. Improv.	\$97,577		
		Washoe Park PDG (80%)	\$20,000		
		West Side Ditch Flow Study PDG	\$25,000		
		West Side Ditch Metering PDG	\$25,000		
		Wetland/Riparian Mapping	\$71,400		
		Spotted Dog Acquisition (40%)	\$6,629,604		
Granted Subtotal	\$49,766,812		\$29,738,548		\$32,125,192
Percent Granted to Date by Resource	44.6%		26.6%		28.8%

### B. Approved Other Projects Outside Grants Program funded by UCFRB Restoration Fund via Consent Decrees

Groundwater		Aquatic		Terrestrial	
		Milltown (75% of \$9.6 Million)	\$7,200,000	Milltown (25% of \$9.6 Million)	\$2,400,000
		DOI Wetlands (SBC CD) (60% of \$3.2 Mil)	\$1,920,000	DOI Wetlands (SBC CD) (40% of \$3.2 Mil)	\$1,280,000
Subtotal	\$0		\$9,120,000		\$3,680,000
Other Projects Subtotal	\$49,766,812		\$38,858,548		\$35,805,192
Running Percent	40.0%		31.2%		28.8%

### C. Approved funding for Silver Bow Cr. Greenway as per the December 2011 Final Long Range Guidance Plan

Groundwater		Aquatic		Terrestrial	
	\$0	SBC Greenway (60% of \$8 Million)	\$4,800,000	SBC Greenway (40% of \$8 Million)	\$3,200,000
Other Projects Subtotal	\$49,766,812		\$43,658,548		\$39,005,192
Running Percent	37.6%		33.0%		29.5%
SBC Greenway Total			\$14,138,954		\$9,425,970

D. Summary of Educational/Database Projects	
<b>(these are included in tables above)</b>	
Bird's Eye View Education Project	\$124,995
Browns Gulch Education PDG	\$17,602
Clark Fork Ed. Program	\$721,052
Milltown Education PDG	\$23,914
Ramsay School	\$16,151
U of M Database Planning	\$9,550
<b>Total</b>	<b>\$913,264</b>
Percent of Total	0.7%

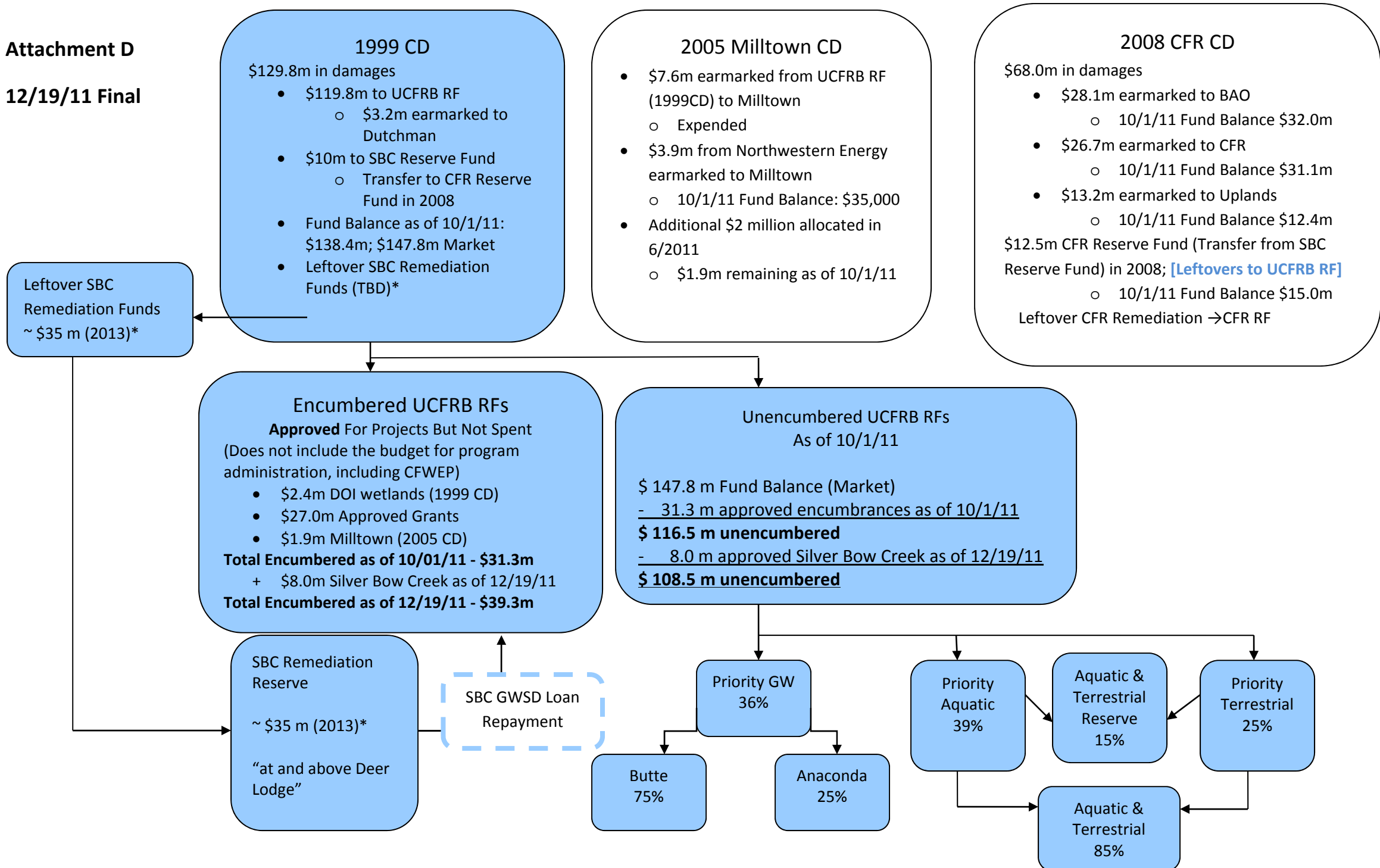
E. Summary of Recreational Projects	
<b>(these are included in tables above)</b>	
Bonner Pedestrian Bridge	\$673,200
Butte Fishing Pond/Open Space PDG	\$25,000
Butte Fishing Pond/Open Space	\$1,200,000
Deer Lodge Trail PDG	\$25,000
Maud S Canyon Trail	\$62,040
Garrison Trails Project	\$24,974
Haefner PDG	\$24,750
Johnson/Cottonwood Creek Trail	\$633,015
Milltown/Two Rivers Rec. Facilities (50%)	\$1,598,249
Silver Bow Creek Greenway (30%)	\$4,669,477
Thompson Park Improvement Project (80%)	\$790,722
Warm Springs Ponds Rec. Improv.	\$97,577
Washoe Park PDG	\$25,000
<b>Total</b>	<b>\$9,849,004</b>
Percent of Total	7.9%

<sup>1</sup> NOTE: The following revisions were made to the 11-8-11 proposed final version of this attachment to reflect the Governors' approval of the Long Range Guidance Plan in December 2011:

- 1) Section A was revised to incorporate a \$1,475 budget increase in the otter distribution grant (under the terrestrial category) from \$24,982 to \$26,457 that had been approved prior to, but not reflected in, the 11-8-11 proposal; and
- 2) Section C was revised to include the Governor's approval of an additional \$8 million to the Silver Bow Creek Greenway and to delete references to the proposed Dutchman Consent Decree.

**Attachment D**

**12/19/11 Final**



\*The amount of leftover Silver Bow Creek remediation funds that would be available for future allocation and when those funds would be available remains to be determined. In February 2010, Joel Chavez of DEQ estimated about \$35 million may be leftover following completion of major remedy construction expected in 2013.

**Attachment 5-1**  
**PROPOSED RESTORATION CONCEPT ABSTRACT SUBMITTAL FORM**

The State of Montana, through the Natural Resource Damage Program (NRDP), is soliciting restoration concepts for aquatic and terrestrial restoration projects, to be considered as part of the State's aquatic and terrestrial restoration plan development efforts. This solicitation is being conducted pursuant to the procedures set forth in the *2012 Process Plan*, which specifies the type of priority projects and project location restrictions. See Section 5.3 of *Process Plan* for a description of the solicitation. As indicated therein, the State consider these restoration concepts, as well as restoration alternatives generated by the State, in drafting its Aquatic and Terrestrial Restoration Plans that will be submitted for public comment and consideration of the Advisory Council and Trustee Restoration Council and a final decision by of the Governor by the end of 2012.

For restoration concepts to be considered, submit a project abstract that covers the basic information indicated below to the NRDP **no later than Friday, June 15, 2012**. Since proposals are generally conceptual in nature, abstracts are likely to be no more than five pages. For additional information, call or e-mail the NRDP (see contact information below).

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**Your Name and Contact Information:** Provide mailing address, phone number, and e-mail contact information.

**Project Purpose and Benefits:** Indicate why the project is being proposed. Include the expected goals, objectives and outcome of the project. Describe how the project would benefit aquatic or terrestrial resources within the Upper Clark Fork River Basin (UCFRB) and/or benefit the public's use and enjoyment of those resources.

**Project Location:** Provide a short description of the project location, along with a project map.

**Project Description:** Describe the components of the project and how it will be implemented. Also indicate any suggested lead entity and project partners for implementing the project. Indicate what progress, if any, has been accomplished to date on the project.

**Project Schedule:** Indicate the timeframe needed to complete the project, and any specific completion deadlines that would apply.

**General Cost Information:** Provide an estimate of total project costs. If possible, provide a categorical breakdown of the costs for the following categories: salaries/benefits; contracted services, supplies and materials, travel and communication, equipment, other (specify). Indicate committed or anticipated matching funds.

Send Information **no later than Friday, June 15, 2012** to:

**Natural Resource Damage Program**

**1301 East Lockey**

**P.O. Box 201425**

**Helena, MT 59620-1425**

**Phone: (406) 444-0205**

**Fax: (406) 444-0236**

**E-mail: [nrdp@mt.gov](mailto:nrdp@mt.gov)**





## Attachment 5-2

### Additional Guidance Specific to Aquatic Restoration in Priority 1 and 2 Areas

The final Aquatic Prioritization Plan offers recommendations about the types of projects that are most likely to derive the greatest fishery benefits.<sup>1</sup> Those include projects that improve instream flows, fish passage, and riparian condition via passive methods, such as fencing or changes in land management. In general, passive development of habitat is encouraged and instream habitat enhancement is discouraged.

As an extension of the Aquatic Prioritization Plan, FWP area biologists produced this guidance that specifies the types of restoration activities that are encouraged for the 31 Priority 1 and 2 stream areas, based on the predicted effectiveness of those actions in addressing the dominant limiting factors to aquatic life. In general, the encouraged activities and methods to accomplish them are:

- Flow augmentation: water right purchase, lease, or irrigation system efficiency improvements;
- Riparian habitat protection and/or Improvement: riparian fencing, grazing management, woody plant re-establishment, conservation easement, land purchase;
- Fish passage improvement: culvert replacement, irrigation diversion improvements, fish screen construction on diversions; and
- Sediment reduction/Bank stabilization: woody plant re-establishment, streambank reconstruction, road improvements.

The activities listed below and locations shown on Figure 5-5 were developed by the FWP fishery biologists managing the aquatic resources in the Priority 1 and 2 areas. The list below outlines and prioritizes the encouraged activities within each drainage. It is important to note that some bank stabilization may be necessary in some drainages to address certain issues, but large scale bank stabilization or channel re-alignment projects are not listed nor recommended. Protecting and augmenting flows and riparian habitat as well as improving fish passage are the most important factors to consider.

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<sup>1</sup> See pp. 11-12 in the Aquatic Prioritization Plan.

**PRIORITY 1 AREAS**  
**(LISTED ALPHABETICALLY)**  
**Encouraged Restoration Activities (listed in order of priority)**

**Barker Creek**

1. Fish passage improvement; if/where found necessary.
2. Riparian habitat protection (or improvement if appropriate) on private lands near mouth.

**Browns Gulch**

1. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); particularly in lower reaches closer to mouth.
2. Fish passage improvement at select irrigation diversions (e.g., diversion redesign or retrofit to allow for fish passage); throughout drainage.
3. Riparian habitat improvement (e.g., riparian fencing, woody shrub plantings); primarily on private lands in lower 14 miles – especially in areas completely devoid of woody vegetation.
4. Sediment reduction/bank stabilization at select, localized areas where project would benefit stream function; throughout drainage.
5. Ditch screening to reduce fish entrainment into irrigation ditches; throughout drainage.
6. Channel stabilization/reconstruction in select reaches with severe instability; mostly in lower 6 miles.

**Clark Fork River – Above Deer Lodge**

1. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); throughout reach, with preference given to projects with greater flow quantities and those which yield flows that are protectable for a greater distance downstream.

**German Gulch**

1. Riparian habitat protection and improvement (e.g., riparian fencing, woody shrub plantings); within livestock allotment area.
2. Additional flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); near mouth.
3. Acquisition of or placement of conservation easements on the remaining private in-holdings along the channel.

**Little Blackfoot River – Lower**

1. Riparian habitat improvement (e.g., riparian fencing, woody shrub and tree plantings); primarily on private lands downstream of Elliston.
2. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); primarily downstream of Elliston, with greater preference given to projects closer to the mouth or those where flows are protectable to or beyond the mouth.
3. Fish passage improvement at select irrigation diversions (e.g., diversion redesign or retrofit to allow for fish passage); throughout reach.
4. Ditch screening to reduce fish entrainment into irrigation ditches; throughout reach.

5. Bank stabilization/channel reconstruction in select, localized areas where projects would benefit stream function; primarily on private lands downstream of Elliston.

### **Storm Lake Creek**

1. Selective fish passage structure; at existing Silver Lake diversion.
2. Flow augmentation/protection; between Storm Lake and Silver Lake.
3. Fish habitat improvement; on lower mile where channelized/ditched.
4. Riparian habitat protection; on private lands near mouth.

### **Racetrack Creek – Lower**

1. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); from Cement Ditch to mouth, with greater preference given to projects where flows are protectable to mouth.
2. Fish passage improvement at select irrigation diversions (e.g., diversion redesign or retrofit to allow for fish passage); throughout reach.
3. Riparian habitat improvement/protection (e.g., riparian fencing, woody shrub plantings); throughout reach.
4. Ditch screening to reduce fish entrainment into irrigation ditches; throughout reach.
5. Bank stabilization/channel reconstruction in select, localized areas where projects would benefit stream function; throughout reach.

### **Twin Lakes Creek**

1. Selective fish passage structure; at existing Silver Lake diversion.
2. Flow augmentation/protection; below Silver Lake Diversion.
3. Fish passage improvement; at highway/road crossings near mouth.
4. Ditch screening to reduce fish entrainment; at Silver Lake diversion.
5. Riparian habitat protection; on private lands near mouth.

### **Warm Springs Creek – Lower**

1. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); throughout drainage, with greater preference given to projects where flows are protectable to or beyond the mouth.
2. Riparian habitat protection/enhancement (e.g., conservation easements, riparian fencing); on private grazing lands.
3. Ditch screening to reduce fish entrainment into irrigation ditches; Gardiner Diversion is a priority.
4. Channel reconstruction in select, localized areas where projects would benefit stream function; if/where found necessary after remediation efforts are completed.

### **Warm Springs Creek - Upper**

1. Flow augmentation/protection (e.g., water right purchases, water leases); throughout reach.
2. Ditch screening to reduce fish entrainment into irrigation ditches throughout reach.
3. Riparian habitat protection/enhancement (e.g., riparian fencing, conservation easements, woody shrub plantings); on private grazing lands.

4. Fish habitat improvement; in simplified/channelized reaches along Highway 1 corridor. Primarily the accelerated placement of large woody debris into the channel.

### **West Fork Warm Springs Creek**

1. Fish passage improvement (e.g., culvert removal); at single Forest Service road crossing which dead ends on other side of stream.

## **PRIORITY 2 AREAS** **(LISTED ALPHABETICALLY)**

### **Encouraged Restoration Activities (listed in order of priority)**

### **Baggs Creek**

1. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); in lower extent of drainage.
2. Riparian habitat protection/enhancement (e.g., riparian fencing); on private grazing lands and Forest Service allotment.
3. Fish passage improvement at select irrigation diversions (e.g., diversion redesign or retrofit to allow for fish passage); throughout drainage with special focus on the Cottonwood Creek diversion that crosses the stream near the mouth.
4. Ditch screening to reduce fish entrainment into irrigation ditches; in lower extent of drainage.
5. Sediment reduction/bank stabilization in select, localized areas where projects would benefit stream function; mostly on private lands in lower extent of drainage.

### **Beefstraight Creek**

1. Riparian habitat protection and improvement (e.g., riparian fencing); at impacted areas within livestock allotment area.

### **Blacktail Creek**

1. Riparian habitat improvement (e.g., riparian fencing, woody shrub and tree plantings); primarily on private lands downstream of Nine Mile.
2. Channel reconstruction in select, localized areas where projects would benefit stream function; primarily at locations where channel has been diverted into a ditch. These areas are identified and described in the 2009 Restoration Study of Blacktail Creek prepared by Pioneer Technical Services, Inc. for the Mile High Conservation District and City-County of Butte-Silver Bow.
3. Fish passage improvement at select irrigation diversions and culverts (e.g., diversion or crossing redesign or retrofit to allow for fish passage); throughout drainage.
4. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); primarily downstream of Nine Mile, with greater preference given to projects where flows are protectable to or beyond the mouth.
5. Ditch screening to reduce fish entrainment into irrigation ditches; throughout drainage.
6. Sediment reduction/bank stabilization in select, localized areas where projects would benefit stream function; mostly on private lands below Nine Mile.

### **Boulder Creek**

1. Reduction in fish entrainment at irrigation diversions via ditch screening; between the mouth of Boulder Creek and Maxville.
2. Riparian habitat improvement including riparian fencing/protection and woody shrub and tree planting; downstream of Princeton (only a portion of this reach is impacted by riparian grazing).
3. Acquisition of or placement of conservation easements on private in-holdings adjacent to Boulder Creek.

### **Clark Fork River – Below Deer Lodge**

1. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); throughout reach, with preference given to projects with greater flow quantities and those which yield flows that are protectable for a greater distance downstream.

### **Cottonwood Creek – Lower**

1. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); throughout drainage, with greater preference given to projects where flows are protectable to or beyond the mouth.
2. Fish passage improvement at select irrigation diversions and culverts (e.g., diversion or crossing redesign or retrofit to allow for fish passage); throughout reach.
3. Riparian habitat protection/enhancement (e.g., riparian fencing); mostly on private lands above Interstate 90.
4. Ditch screening to reduce fish entrainment into irrigation ditches; throughout reach.
5. Channel reconstruction in select, localized areas where projects would benefit stream function; mostly on private lands upstream of Interstate 90.

### **Cottonwood Creek – Upper**

1. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); throughout reach.
2. Riparian habitat protection and improvement (e.g., riparian fencing); at impacted locations throughout reach.

### **Dempsey Creek – Lower**

1. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); throughout drainage, with greater preference given to projects where flows are protectable to mouth.
2. Fish passage improvement at select irrigation diversions (e.g., diversion redesign or retrofit to allow for fish passage); throughout reach.
3. Riparian habitat protection/enhancement (e.g., riparian fencing, woody shrub and tree plantings); throughout reach.
4. Ditch screening to reduce fish entrainment into irrigation ditches; throughout reach.
5. Bank stabilization/channel reconstruction in select, localized areas where projects would benefit stream function; mostly on private lands upstream of Interstate 90.

### **Dog Creek**

1. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); primarily in lower extent of drainage, with greater preference given to projects where flows are protectable to or beyond the mouth.
2. Riparian habitat protection/enhancement (e.g., riparian fencing, woody shrub and tree plantings); on private lands with reduced quality riparian habitat.
3. Fish passage improvement; if/where found necessary.
4. Ditch screening to reduce fish entrainment into irrigation ditches; if/where found necessary.
5. Channel or bank reconstruction in select, localized areas where projects would benefit stream function; if/where found necessary.

### **Flint Creek – Lower**

1. Flow augmentation downstream of Allendale Diversion (e.g., water right purchases, water leases, irrigation efficiency improvements); with greater preference given to projects that allow flow protection to the mouth.
2. Reduction in fish entrainment at irrigation diversions via ditch screening; throughout reach.
3. Fish passage improvement particularly at irrigation diversions with passage issues (e.g. diversion redesign or retrofit to allow for fish passage); throughout reach.
4. Riparian habitat improvement including riparian fencing/protection, woody shrub and tree plantings, off-site watering; throughout reach.

### **Flint Creek – Upper**

1. Riparian habitat improvement including riparian fencing/protection, woody shrub and tree plantings, off-site watering; throughout reach.
2. Fish passage improvement particularly at irrigation diversions with passage issues (e.g., diversion redesign or retrofit to allow for fish passage); throughout reach – particularly important below the mouth of Boulder Creek.
3. Reduction in fish entrainment at irrigation diversions via ditch screening; throughout reach – particularly important below the mouth of Boulder Creek.

### **Foster Creek**

1. Fish passage improvement; if/where found necessary.
2. Riparian habitat protection (or improvement if appropriate); primarily on private lands near mouth.

### **Harvey Creek**

1. Riparian habitat improvement including riparian fencing/protection and woody shrub and tree planting, off-site watering; throughout drainage.
2. Acquisition of or placement of conservation easements on private in-holdings adjacent to Harvey Creek.
3. Reduction in fish entrainment at irrigation diversions via ditch screening and potentially the development of a siphon at the lowest diversion; primarily below county road.

4. Fish passage improvement at lowest irrigation diversion (e.g., diversion redesign, retrofit-approximately 50 meters above mouth) and potentially selective passage of bull trout at barrier located just below county road crossing
5. Flow augmentation downstream of lowest diversion (approximately 50 meters above mouth) – may be necessary to provide adequate water for up- and downstream fish migration should fish entrainment or upstream passage be improved at this diversion (e.g., water right purchase or water lease).

#### **Little Blackfoot River – Upper**

1. Riparian habitat protection/enhancement (e.g., riparian fencing, conservation easements, woody shrub and tree plantings); on private lands.
2. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); primarily in lower extent of reach, with greater preference given to projects where flows are protectable downstream.
3. Fish passage improvement; if/where found necessary.
4. Ditch screening to reduce fish entrainment into irrigation ditches; if/where found necessary.

#### **Lost Creek – Lower**

1. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); primarily between Dutchman Dike and mouth.
2. Fish passage improvement; primarily at Dutchman Dike and Gardiner Ditch.
3. Ditch screening to reduce fish entrainment into irrigation ditches; throughout reach.
4. Riparian habitat protection/enhancement (e.g., riparian fencing, conservation easements, woody shrub and tree plantings); in locations where protections are not already in place or where additional enhancement would speed riparian recovery.

#### **Mill Creek – Lower**

1. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); primarily in lower extent of drainage, with greater preference given to projects where flows are protectable to mouth.
2. Fish passage improvement; if/where found necessary.
3. Ditch screening to reduce fish entrainment into irrigation ditches; if/where found necessary.
4. Riparian habitat protection/enhancement (e.g., riparian fencing, conservation easements, woody shrub and tree plantings); on private lands.

#### **Silver Bow Creek**

1. Flow augmentation (e.g., water right purchases, water leases); throughout drainage, with preference given to projects with greater flow quantities and those which yield flows that are protectable for a greater distance downstream.

### **Snowshoe Creek – Lower**

1. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); throughout reach.
2. Riparian habitat protection/enhancement (e.g., riparian fencing, woody shrub and tree plantings); throughout reach.
3. Fish passage improvement; if/where found necessary.
4. Ditch screening to reduce fish entrainment into irrigation ditches; if/where found necessary.
5. Channel reconstruction/bank stabilization in select, localized areas where projects would benefit stream function; throughout reach.

### **Spotted Dog Creek – Lower**

1. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); throughout reach.
2. Riparian habitat protection/enhancement (e.g., riparian fencing, woody shrub and tree plantings); throughout reach.
3. Fish passage improvement; if/where found necessary.
4. Ditch screening to reduce fish entrainment into irrigation ditches; if/where found necessary.
5. Channel reconstruction/bank stabilization in select, localized areas where projects would benefit stream function; throughout reach.

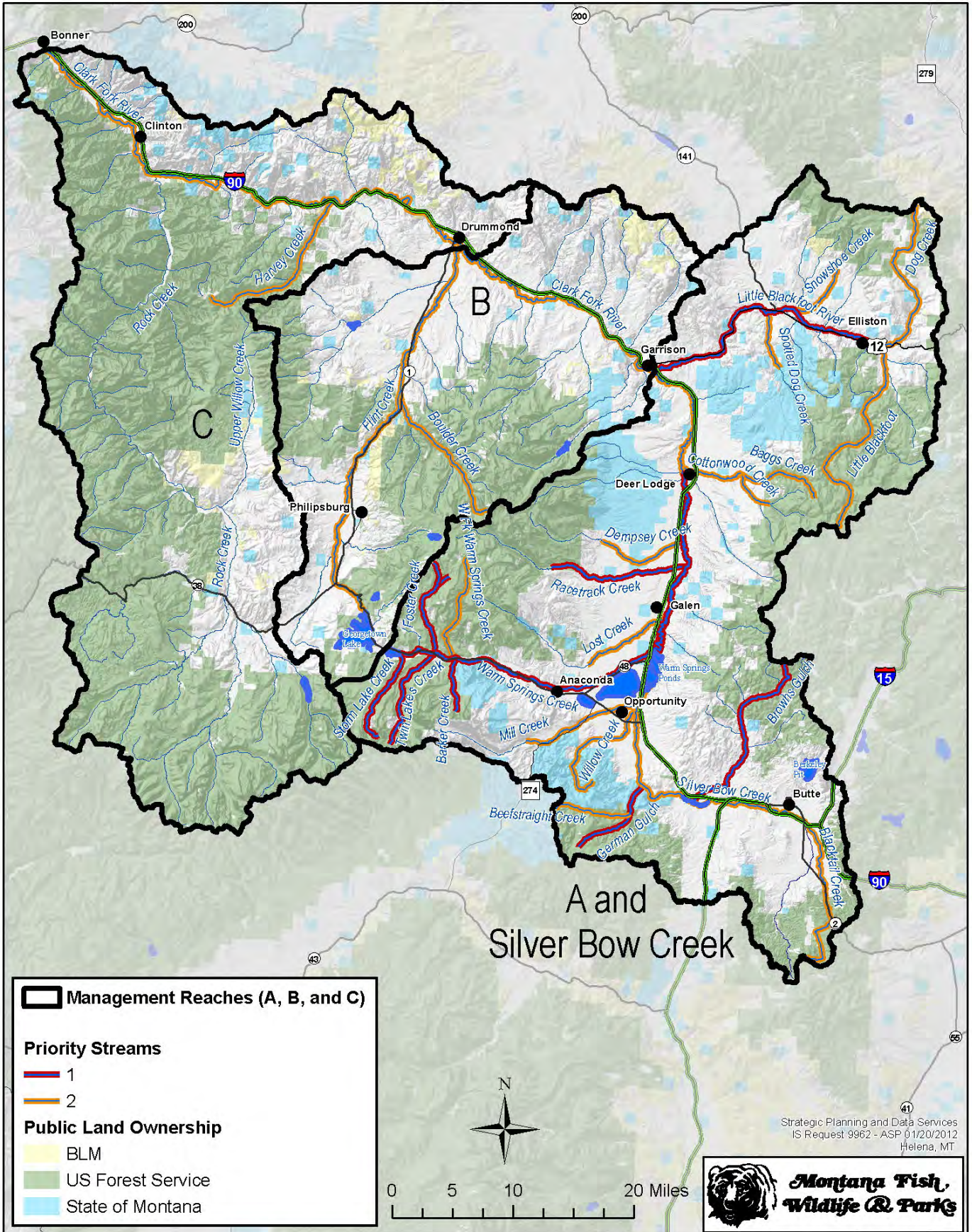
### **Willow Creek**

1. Flow augmentation (e.g., water right purchases, water leases, irrigation efficiency improvements); primarily in lower extent of drainage below Wildlife Management Area, with greater preference given to projects where flows are protectable to mouth.
2. Riparian habitat protection/enhancement (e.g., riparian fencing, woody shrub and tree plantings); on private lands below Wildlife Management Area.
3. Fish passage improvement; if/where found necessary.
4. Ditch screening to reduce fish entrainment into irrigation ditches; if/where found necessary.
5. Channel reconstruction/bank stabilization in select, localized areas where projects would benefit stream function; on private lands below Wildlife Management Area.



Figure 5-5. Aquatic Priority Areas 1 and 2

# Priority Areas in the Upper Clark Fork River Basin





## Attachment 5-3

### Additional Guidance Specific to Terrestrial Restoration in Priority 1 and 2 Areas

#### Types of Encouraged Terrestrial Restoration Projects and Additional Assessments

The terrestrial prioritization plan offers the following elements for future wildlife habitat protection and enhancement projects in priority areas:<sup>1</sup>

- a) A few large projects are generally preferred to many smaller projects because of the lower cost per area and larger footprint on the landscape. Clustering of projects will improve their effectiveness.
- b) Other things being equal, projects adjacent to public lands or conservation easements are preferred to projects surrounded by unprotected private land or isolated from good wildlife habitat by large expanses of compromised habitats.
- c) Projects that provide protection and enhancement of several targeted habitats are generally preferred over projects that only contain a single habitat.
- d) Other things being equal, projects that meet some or all of the fisheries restoration goals are preferred to projects that lack benefits to fisheries.
- e) Access for wildlife-related recreation needs to be managed to ensure that increased recreational use does not negatively impact wildlife resources or compromise restoration and enhancement efforts.

As part of the effort to develop the Terrestrial Restoration Plan, the State will be evaluating the following additional information for Priority 1 and 2 areas identified in the terrestrial prioritization plan (Figure 5-6):

- 1) An evaluation of the types of habitats and terrestrial resources that have already been covered by NRD-funded acquisitions and conservation easements shown in Table 5-1, or affected by remedy or restoration actions. The purpose of this evaluation will be to identify terrestrial injured resources that have not yet been addressed, or inadequately addressed by NRD actions to date.
- 2) An assessment of habitat enhancement needs for lands already acquired (fee-title or easement) with NRD funds. The habitat effectiveness for wildlife in some of these areas may be increased through management actions, such as addressing weed infestations, fencing riparian areas to better manage livestock, or reclaiming old roads that are creating resource problems but are no longer needed for access or management purposes.

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<sup>1</sup> See p. 14 of the terrestrial prioritization plan.



- 3) New information from the National Wetland Inventory for the western half of the UCFRB, expected to be available in early 2012, will be incorporated and evaluated to identify areas where wetland habitat can be protected or restored.
- 4) New information on riparian habitat condition may be available for some areas, from local watershed groups or other entities. This information will be evaluated to determine its usefulness for terrestrial restoration planning.

All riparian, wetland, and aspen communities in the UCFRB are considered high priority for conservation and enhancement efforts and thus classified as Priority 1 areas in the terrestrial prioritization plan. The primary reason why all wetland and riparian habitats were classified as Priority 1 in the terrestrial prioritization plan was that we lacked adequate information across the entire watershed to further prioritize within these important habitats. Additional information from NWI and other sources may enable the State to identify priority areas within these habitats.

In addition, many riparian areas in the Basin are surrounded by lower priority or non-priority lands. Any projects in these areas will need to focus on the riparian and wetland habitats, along with an appropriate upland habitat buffer. Adjacent upland areas should be protected as part of a wetland or riparian project if they provide critical nesting or foraging habitat for species that use riparian and wetlands, or provide natural vegetation buffers between the wetlands and riparian and nearby human development. Examples of adjacent upland buffers include native grasslands surrounding wetlands that provide important nesting habitat for dabbling ducks that use those wetlands, and grasslands adjacent to riparian corridors that provide foraging habitat for raptors such as Swainson's hawks, red-tailed hawks, and long-eared owls. Projects targeting wetland and riparian habitats, but surrounded by low priority uplands should preferably include no less than 25 percent wetland or riparian habitat, with the surrounding low-priority uplands dominated by native upland habitat.

The most challenging part of planning and implementing terrestrial restoration will be identifying landowners who are willing to consider conservation easements or acquisition of portions of their property, to protect targeted habitats in high priority areas in a manner cost-effective to the State. The State will work with other agencies and nonprofit organizations who are involved in on the ground conservation projects on private lands in the UCFRB for assistance in identifying landowners who may be interested. GIS information will also be used to identify areas where larger blocks of targeted habitats are under one ownership, or fewer owners, to identify areas where landowners could be approached by the State or a partner for conservation projects. Larger projects involving fewer landowners tend to be more cost-effective than projects involving many landowners.

The State will use the results of its evaluations, combined with information from the public restoration concept solicitation process, in determining on what wildlife habitat and enhancement activities for the Terrestrial Restoration Plan. Four types of projects and budget categories are likely: wildlife habitat acquisition, wildlife habitat enhancement, recreation, and monitoring. Budgets for the wildlife habitat enhancement projects can be relatively specific, but budgets for land, water and other acquisitions would likely be more generic to prevent pre-determinations and false expectations of a purchase price ahead of the appraisal and negotiation

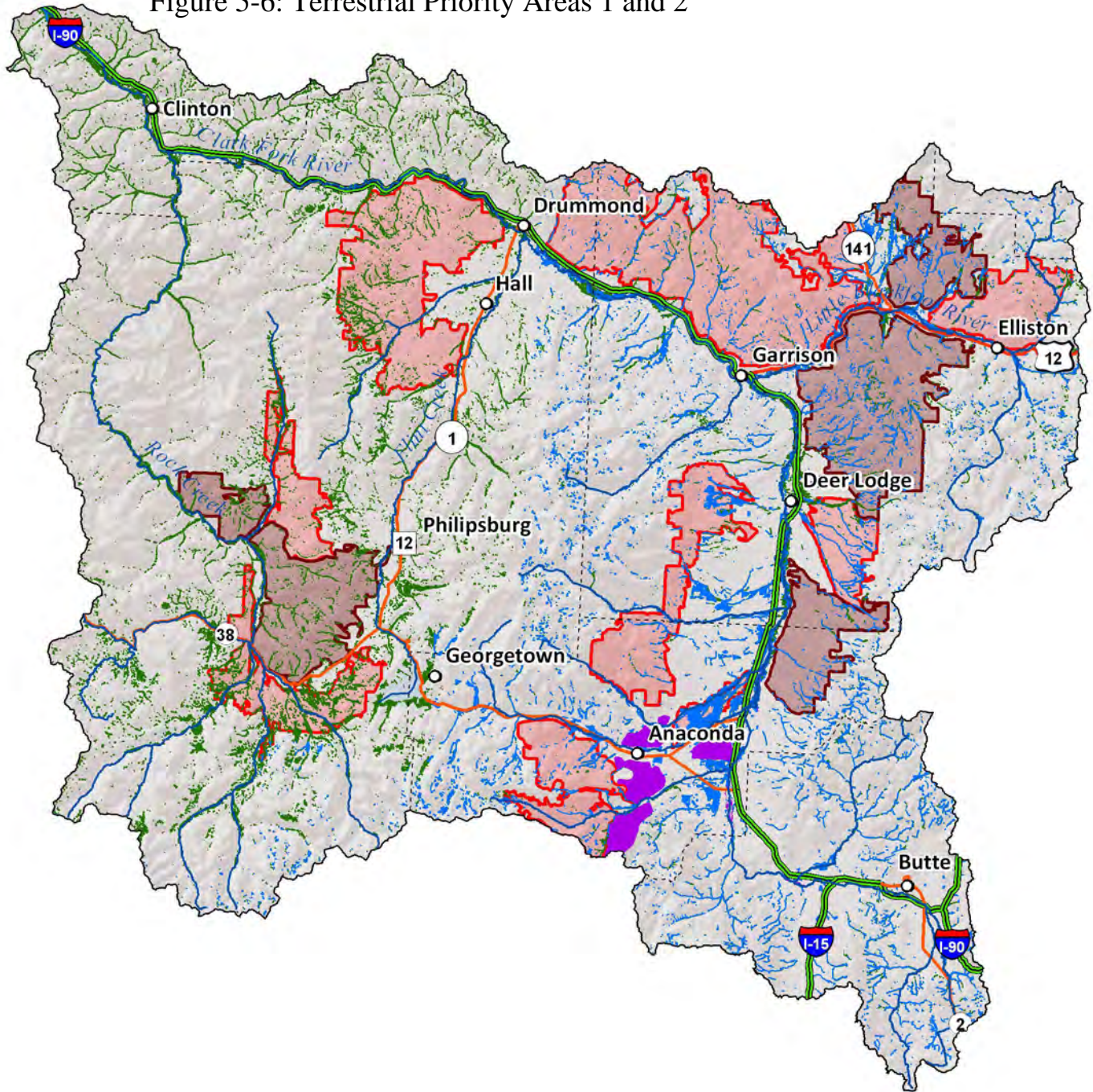
processes. For some of these acquisitions, however, the State may propose a certain minimum budget set-aside.

### Terrestrial Monitoring

The State will need to include a basin-wide monitoring plan in the Terrestrial Restoration Plan, specifying the purpose, specific monitoring areas, and monitoring protocols. Terrestrial monitoring is expected to include both vegetative and wildlife monitoring components, and will primarily focus on acquisitions, conservation easements, and wildlife habitat enhancement project areas. These areas could include both aquatic and terrestrial-funded projects, as appropriate. Terrestrial wildlife monitoring may also be needed on some recreation projects, to ensure that wildlife resources are not negatively impacted by recreational activities.

Monitoring helps ensure that terrestrial projects provide the promised benefits to terrestrial resources. Monitoring will also help identify enhancement opportunities, and provide valuable information for adaptive management of acquired properties. Monitoring can be included upfront as a part of individual projects, as long as appropriate monitoring protocols are followed. Designing a basin-wide monitoring strategy will ensure that the restoration alternative is consistently monitored over the long-term. Monitoring will be accomplished by FWP employees or by contractors under the direction of FWP, as appropriate.

Figure 5-6: Terrestrial Priority Areas 1 and 2



- Wetland/Riparian from NWI
- Wetland/Riparian from MT Landcover
- Towns
- County Boundaries
- Rivers & Streams
- Interstate
- Montana Route
- U.S. Route
- Terrestrial Injured Areas

**Priority Areas**

- 1
- 2



**Table 5-1. Funded Acquisition/Easement Grant Projects**

<b>Project Name</b>	<b>County</b>	<b>Acreage</b>	<b>Year Funded</b>	<b>Amount</b>	<b>Owner*</b>
Z-4 Ranch Conservation Easement	Granite	2,100	2000	\$10,000	FVLT
Madsen Easement	Missoula	157	2006	\$25,000	FVLT
Blue-eyed Nellie Moore Acquisition	Deer Lodge	30	2009	\$142,500	FWP
Stucky Ridge/Jamison Property Acquisition	Deer Lodge	76	2008	\$265,335	FWP
Peterson Ranch Conservation Easement	Granite	3,775	2009	\$334,125	FVLT
Milltown Land Acquisition	Missoula	415	2008	\$595,628	FWP
Manley Ranch Conservation Easement	Powell	3,416	2000	\$608,048	FWP
Big Butte Property Acquisition	Silver Bow	350	2005	\$687,842	B-SB
Paracini Pond Property Acquisition	Powell	272	2009	\$1,201,905	DEQ
Duhamé Property Acquisition	Silver Bow	1,800	2005	\$1,668,557	FWP
Spotted Dog Acquisition	Powell	27,497	2010	\$16,574,009	FWP
Stuart Mill Bay Acquisition	Deer Lodge	363	2002	\$2,000,000	FWP
Watershed Land Acquisition	Deer Lodge	9,000	2000, 2001	\$5,831,904	FWP
<b>Summary of Projects Involving Acquisitions and other Activities</b>					
German Gulch Watershed	Silver Bow	81	2002, 2004, 2005	\$925,712	USFS
Thompson Park Improvement Project	Silver Bow	40	2007	\$988,402	B-SB
Silver Bow Creek Greenway	Silver Bow	370	2000-2002; 2005-2009	\$15,564,924	GSD
<b>*Guide to Owner Category</b>					
FVLT - Five Valleys Land Trust					
FWP - Montana Fish, Wildlife and Parks					
B-SB - Butte-Silver Bow					
DEQ - Montana Department of Environmental Quality					
GSD - Greenway Service District					





## Attachment 5-4

### Additional Guidance on Recreational Projects

This attachment offers additional guidance on the types of recreational projects that are likely to meet the *Long Range Guidance Plan* requirement of offering additional natural resource benefits and not just recreational benefits.

As noted in section 5.6, in general, recreational projects that will, in addition, offer resource benefits are those that would prevent resource degradation by the user public, or those that provide protection for a significant amount of high priority habitat, in addition to appropriately designed recreational access features. Examples of these type of recreational projects include the recreational trail projects being implemented by the Greenway Service District along Silver Bow Creek and by Montana Fish, Wildlife, and Parks (FWP) at the Milltown site that are designed to provide site access, while protecting restored areas. An example of a recreational project that would not offer resource benefits would be the development of a whitewater park within the newly restored Clark Fork River at Milltown. This type of structure in the middle of the Clark Fork River would reduce the rivers ability to naturally function, potentially limit fish passage, and negatively impact other restoration goals for the area.

Typically, existing recreational projects would be a higher priority for funding than new developing recreational projects, if the resource benefits to priority areas and recreational benefits to the public are the same. The result of funding existing recreational projects would likely have a lower impact on the resources than the development of new recreation.

An example of terrestrial-oriented recreation project that would offer resource benefits would be access management features such as a parking area and fencing that would facilitate walk-in access and help prevent impacts to wildlife from illegal motorized use. In some cases, new recreational opportunities created by these projects may need some limited user restrictions to ensure recreation does not unduly impact wildlife.

Fishing access sites are also a type of recreational project that can also offer resource benefits, if appropriately designed and located. It is anticipated that more fishing and floating will take place over the decades to come on the Clark Fork River as fishing improves, and the human population of Montana and the United States increases. A fishing access site with a small developed recreational access can protect or enhance riparian habitat and thus provide significant resource benefits. Specifically for this category of recreational projects, the following is guidance on potential locations and basic components of desired fishing access sites in Priority 1 and 2 areas, based on input from FWP.

## Desired Fishing Access Site Developments in the UCFRB

Below are identified possible locations for fishing access sites (FASs) on the Clark Fork River from Warm Springs to Missoula based on FWP generated criteria, specified below. Many of the identified locations already exist as access points. Some are FWP sites, some are sites owned by other branches of government, and some are privately owned lands. Current development at any given site varies from non-existent to largely developed, but lacking some necessary amenities to make the site properly functional. Partnering with other entities, including other governmental agencies, may be necessary for certain sites. Signing, fencing, and operations and maintenance costs would need to be considered.

### Main Criteria in Producing a List of Potential Sites or Projects:

- establishing reasonable float distances between sites
- selecting sites that already exist to some extent
- choosing sites to formalize access for the public
- selecting sites where anticipated use is greatest
- establishing access on tributaries of the Clark Fork where none exist

Fishing access sites should provide a quality access road, parking, and latrine. Boat launches should be developed at most sites unless a launch already exists. On the Little Blackfoot River and Flint Creek, two tributaries to the Upper Clark Fork, wade access would be the goal; therefore boat launches would not be necessary. Silver Bow Creek is not included below because almost the entire corridor is in the boundaries of the Silver Bow Creek Greenway project, which will allow for widespread public access.

### Clark Fork River – Reach A (Warm Springs to Garrison)

Racetrack Pond  
State Land Downstream of Deer Lodge  
Kohr's Bend FAS  
Little Blackfoot River near Garrison

### Clark Fork River – Reach B (Garrison to Drummond)

Gold Creek  
Jens Bridge

### Clark Fork River – Reach C (Drummond to Missoula)

BLM Access Site  
Bear Gulch  
Bearmouth FAS  
Beavertail Hill

### Tributaries:

Little Blackfoot River between Avon and Elliston (1 site)  
Flint Creek above Maxville (2 sites) and below Maxville (2 sites)

## **Attachment 6-1. Certain Federal NRD Restoration Planning Law and Regulations**

### **CERCLA §111(i), 42 USC 9611(i), Restoration, etc., of natural resources**

Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this chapter for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, and by the governing body of any Indian tribe having sustained damage to natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation, after adequate public notice and opportunity for hearing and consideration of all public comment.

### **CERCLA §107(f)(1), 42 USC 9607(f)(1), Natural resources liability**

In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) of this section liability shall be to the United States Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation: *Provided, however,* That no liability to the United States or State or Indian tribe shall be imposed under subparagraph (C) of subsection (a) of this section, where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) of this section shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource. There shall be no recovery under the authority of subparagraph (C) of

subsection (a) of this section where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980.

**43 CFR 11.81 Damage determination phase—restoration and compensation determination plan.**

(a) *Requirement.* (1) The authorized official shall develop a Restoration and Compensation Determination Plan that will list a reasonable number of possible alternatives for (i) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) the replacement and/or acquisition of equivalent natural resources capable of providing such services, and, where relevant, the compensable value; select one of the alternatives and the actions required to implement that alternative; give the rationale for selecting that alternative; and identify the methodologies that will be used to determine the costs of the selected alternative and, at the discretion of the authorized official, the compensable value of the services lost to the public associated with the selected alternative.

(2) The Restoration and Compensation Determination Plan shall be of sufficient detail to evaluate the possible alternatives for the purpose of selecting the appropriate alternative to use in determining the cost of baseline restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, and, where relevant, the compensable value.

(b) The authorized official shall use the guidance in §§11.82, 11.83, and 11.84 of this part to develop the Restoration and Compensation Determination Plan.

(c) The authorized official shall list the methodologies he expects to use to determine the costs of all actions considered within the selected alternative and, where relevant, the compensable value of the lost services through the recovery period associated with the selected alternative. The methodologies to use in determining costs and compensable value are described in §11.83 of this part.

(d)(1) The Restoration and Compensation Determination Plan shall be part of the Assessment Plan developed in subpart B of this part. If existing data are not sufficient to develop the Restoration and Compensation Determination Plan at the time that the overall Assessment Plan is made available for public review and comment, the Restoration and Compensation Determination Plan may be developed later, after the completion of the Injury Determination or Quantification phases.

(2) If the Restoration and Compensation Determination Plan is prepared later than the Assessment Plan, it shall be made available separately for public review by any identified potentially responsible party, other natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public for a period of no less than 30 calendar days. Reasonable extensions may be granted as appropriate.

(3) Comments received from any identified potentially responsible party, other natural resource trustees, other affected Federal or State agencies or Indian tribes, or any other interested

members of the public, together with responses to those comments, shall be included as part of the Report of Assessment, described in §11.90 of this part.

(4) Appropriate public review of the plan must be completed before the authorized official performs the methodologies listed in the Restoration and Compensation Determination Plan.

(e) The Restoration and Compensation Determination Plan may be expanded to incorporate requirements from procedures required under other portions of CERCLA or the CWA or from other Federal, State, or tribal laws applicable to restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured resources or may be combined with other plans for related purposes, so long as the requirements of this section are fulfilled.

**43 CFR 11.82 Damage determination phase—alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.**

(a) *Requirement.* The authorized official shall develop a reasonable number of possible alternatives for (i) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) the replacement and/or acquisition of equivalent natural resources capable of providing such services. For each possible alternative developed, the authorized official will identify an action, or set of actions, to be taken singly or in combination by the trustee agency to achieve the baseline restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources. The authorized official shall then select from among the possible alternatives the alternative that he determines to be the most appropriate based on the guidance provided in this section.

(b) *Steps.* (1) The authorized official shall develop a reasonable number of possible alternatives that would restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources. Each of the possible alternatives may, at the discretion of the authorized official, consist of actions, singly or in combination, that would achieve those purposes.

(i) Restoration or rehabilitation actions are those actions undertaken to return injured resources to their baseline condition, as measured in terms of the physical, chemical, or biological properties that the injured resources would have exhibited or the services that would have been provided by those resources had the discharge of oil or release of the hazardous substance under investigation not occurred. Such actions would be in addition to response actions completed or anticipated pursuant to the National Contingency Plan (NCP).

(ii) Replacement or acquisition of the equivalent means the substitution for injured resources with resources that provide the same or substantially similar services, when such substitutions are in addition to any substitutions made or anticipated as part of response actions and when such substitutions exceed the level of response actions determined appropriate to the site pursuant to the NCP.

(iii) Possible alternatives are limited to those actions that (i) restore or rehabilitate the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) replace and/or acquire equivalent natural resources capable of providing such services.

(2) *Services provided by the resources.* (i) In developing each of the possible alternatives, the authorized official shall list the proposed actions that would restore, rehabilitate, replace, and/or acquire the equivalent of the services provided by the injured natural resources that have been lost, and the period of time over which these services would continue to be lost.

(ii) The authorized official shall identify services previously provided by the resources in their baseline condition in accordance with §11.72 of this part and compare those services with services now provided by the injured resources, that is, the with-a-discharge-or-release condition. All estimates of the with-a-discharge-or-release condition shall incorporate consideration of the ability of the resources to recover as determined in §11.73 of this part.

(c) *Range of possible alternatives.* (1) The possible alternatives considered by the authorized official that return the injured resources to their baseline level of services could range from intensive action on the part of the authorized official to return the various resources and services provided by those resources to baseline conditions as quickly as possible, to natural recovery with minimal management actions. Possible alternatives within this range could reflect varying rates of recovery, combinations of management actions, and needs for resource replacements or acquisitions.

(2) An alternative considering natural recovery with minimal management actions, based upon the “No Action-Natural Recovery” determination made in §11.73(a)(1) of this part, shall be one of the possible alternatives considered.

(d) *Factors to consider when selecting the alternative to pursue.* When selecting the alternative to pursue, the authorized official shall evaluate each of the possible alternatives based on all relevant considerations, including the following factors:

(1) Technical feasibility, as that term is used in this part.

(2) The relationship of the expected costs of the proposed actions to the expected benefits from the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(3) Cost-effectiveness, as that term is used in this part.

(4) The results of any actual or planned response actions.

(5) Potential for additional injury resulting from the proposed actions, including long-term and indirect impacts, to the injured resources or other resources.

(6) The natural recovery period determined in §11.73(a)(1) of this part.

(7) Ability of the resources to recover with or without alternative actions.

(8) Potential effects of the action on human health and safety.

(9) Consistency with relevant Federal, State, and tribal policies.

(10) Compliance with applicable Federal, State, and tribal laws.

(e) A Federal authorized official shall not select an alternative that requires acquisition of land for Federal management unless the Federal authorized official determines that restoration, rehabilitation, and/or other replacement of the injured resources is not possible.

**43 CFR 11.93 Post-assessment phase—restoration plan.**

(a) Upon determination of the amount of the award of a natural resource damage claim as authorized by section 107(a)(4)(C) of CERCLA, or sections 311(f)(4) and 311(f)(5) of the CWA, the authorized official shall prepare a Restoration Plan as provided in section 111(i) of CERCLA. The plan shall be based upon the Restoration and Compensation Determination Plan described in §§11.81 of this part. The Plan shall describe how the monies will be used to address natural resources, specifically what restoration, rehabilitation, replacement, or acquisition of the equivalent resources will occur. When damages for compensable value have been awarded, the Plan shall also describe how monies will be used to address the services that are lost to the public until restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is completed. The Restoration Plan shall be prepared in accordance with the guidance set forth in §11.81 of this part.

(b) No restoration activities shall be conducted by Federal agencies that would incur ongoing expenses in excess of those that would have been incurred under baseline conditions and that cannot be funded by the amount included in the separate account established pursuant to §11.92(a) of this part unless such additional monies are appropriated through the normal appropriations process.

(c) Modifications may be made to the Restoration Plan as become necessary as the restoration proceeds. Significant modifications shall be made available for review by any responsible party, any affected natural resource trustees, other affected Federal or State agencies or Indian tribes, and any other interested members of the public for a period of at least 30 days, with reasonable extensions granted as appropriate, before tasks called for in the modified plan are begun.

(d) If the measure of damages was determined in accordance with subpart D, the restoration plan may describe actions to be taken that are to be financed from more than one damage award, so long as the actions are intended to address the same or similar resource injuries as those identified in each of the subpart D assessment procedures that were the basis of the awards.





**Attachment 6-2  
Environmental Impact Checklist**

<b>Impacts to Physical Environment</b>	<b>No Impact</b>	<b>Potentially Adverse</b>	<b>Potentially Beneficial</b>	<b>Permits or Approvals Required</b>	<b>Mitigation Required</b>
1. Soil suitability, geological or topographic constraints					
2. Air quality					
3. Groundwater resources and quality					
4. Surface water quality, quantity and distribution systems					
5. Floodplains and floodplain management					
6. Wetlands protection					
7. Terrestrial and avian species and habitats					
8. Aquatic species and habitat					
9. Vegetation quantity, quality and species					
10. Unique, threatened or endangered species or habitats					
11. Unique natural features					
12. Historical and archeological sites					
13. Aesthetics, visual quality					
14. Energy resources, consumption, and conservation					

<b>Impacts to Human Environment</b>	<b>No Impact</b>	<b>Potentially Adverse</b>	<b>Potentially Beneficial</b>	<b>Permits or Approval Required</b>	<b>Mitigation Required</b>
15. Human Health and Safety					
16. Agricultural production (grazing, forestry, cropland)					
17. Access to recreational activity, public lands, open space					
18. Nuisances (odor, dust, glare)					
19. Noise (e.g. separation between housing and construction areas)					
20. Hazardous substance handling, transportation and disposal					
21. Local and state tax base and tax revenue					
22. Employment, population, or housing					
23. Industrial and commercial production					
24. Land use compatibility; Consistency with local ordinances, or solutions, or plans					
25. Demands for governmental services (e.g. site security, fire protection, community water supply, wastewater or stormwater treatment, solid waste management)					
26. Transportation networks and traffic flow					
27. Social structures and mores					
28. Cultural uniqueness and diversity					

**ATTACHMENT 6-3**  
**CONSENT DECREE OR PENDING CONSENT DECREE SITES**

Following is a list of areas that have on-going or planned restoration activities subject to existing or pending consent decrees.

- The confluence of the Big Blackfoot and Clark Fork Rivers at Milltown: Pursuant to the 2005 joint remedial/restoration consent decree, the State is directing restoration work and EPA is directing remediation work at the confluence of these two rivers. The area covers about 2.5 miles upstream of the confluence on the Clark Fork River. Any additional proposed restoration projects for this area should not conflict or interfere with on-going and planned remediation or restoration activities.
  
- 2008 Consent Decree Sites: In October 2008, the federal court approved a consent decree governing the remediation and restoration of the Upper Clark Fork River federal Superfund site and the restoration of Smelter Hill Uplands and Butte Area One sites. The State has begun implementing the restoration plans for these three sites that were approved as part of this consent decree. The areas covered by these sites are generally described below. Any additional projects for these areas should not conflict or interfere with on-going or planned remediation or restoration activities.
  - 1) The Smelter Hill Area Uplands site consists of areas north and south of Anaconda that are comprised of portions of Smelter Hill, Stucky Ridge, and the Mount Haggin Wildlife Management Area.
  
  - 2) The Butte Area One site extends from the upper end of the Metro Storm Drain in Butte to the west or downstream end of the former location of the Colorado Tailings along Silver Bow Creek.
  
  - 3) The Upper Clark Fork River site encompasses the riverbed and floodplain of the Upper Clark Fork River from the Warms Springs Ponds to the Milltown federal Superfund site.
  
- Pending Consent Decree Sites: In addition to the sites listed above, the EPA, ARCO and State are working out the details of the proposed remedial actions for federal Superfund sites in the Butte and Anaconda areas that likely will be the basis for Remedial Action/Remedial Design consent decrees. Projects in these areas may be disfavored if a potential exists for the proposed restoration activities to be accomplished under remediation or to interfere with proposed remediation or restoration activities in these areas.
  - 1) Consent Decree negotiations, although sporadic, are occurring regarding potential remedial actions at the Butte Priority Soils Operable Unit federal Superfund site, which covers an area from Walkerville to approximately Interstate 90.

- 2) Consent Decree negotiations, although sporadic, are occurring regarding potential remedial actions for areas within the Anaconda Regional Wastes, Water and Soils Operable Unit federal Superfund site, which is the subject of substantial on-going or pending remedial work, such as at the Opportunity Ponds, at the injured areas around Smelter Hill, Stucky Ridge and Mount Haggin, along Warm Springs and Willow creeks, and in the Dutchman Creek wetlands area.

## Attachment 6-4

### Previous Restoration Plans

This attachment summarizes the major past restoration planning efforts that helped form a basis for the *Long Range Guidance Plan* and associated prioritization plans.

In the State's 1995 *Restoration Determination Plan (RDP)*, the State analyzed restoration alternatives and selected a specific restoration and or replacement alternative for each of the nine injured resource areas covered under *Montana v. ARCO*, using the DOI legal criteria.<sup>1</sup> The 1995 *RDP* provided part of the basis for the State's partial settlement with ARCO in 1999.

With respect to the groundwater injury sites in Butte and Anaconda, the 1995 *RDP* analyzed various potential groundwater restoration and drinking water replacement alternatives. In addition, the Counties' master plans, which will form the basis of their proposed groundwater restoration plans, prioritize drinking water replacement projects for these areas and include an analysis of alternatives using many of the same criteria as the DOI legal criteria, as further detailed in Section 3.

From 2003 to 2008, the State produced a restoration plan, and several revisions thereof, for the Milltown site, which was incorporated into a consent decree that addressed the terms and costs of cleaning up the Milltown Dam Reservoir area east of Missoula and restoring the Clark Fork and Blackfoot Rivers at the site. The 2008 Milltown Restoration Plan<sup>2</sup> included an analysis of restoration alternatives and selection of a preferred alternative that essentially revised the 1995 *RDP's* restoration alternatives analysis for the Milltown site.

In 2007, the State produced restoration plans for the Butte Area One, Smelter Hill Uplands, and Clark Fork River sites that were incorporated into the 2008 Consent Decree, which finally settled *Montana v. ARCO*.<sup>3</sup> These plans included an analysis of restoration alternatives and selection of a preferred alternative that essentially revised the 1995 *RDP's* restoration alternatives analysis for these three sites.

Following the final settlement of *Montana v ARCO* in 2008, the State initiated restoration planning efforts that ultimately led to the framework provided in the *Long Range Guidance Plan*. A myriad of approaches to allocating the UCFRB Restoration Funds to groundwater, aquatic, and terrestrial resources were proposed and subject of considerable deliberation by the Advisory

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<sup>1</sup> *Restoration Determination Plan for the UCFRB*, prepared by the NRDP, with assistance from Rocky Mountain Consultants, Inc., dated October 1995.

<sup>2</sup> *Design Summary and Implementation Plan, Restoration Plan for the Clark Fork River and Blackfoot River near Milltown Dam*, prepared for NRDP by River Design Group, Inc., WestWater Consultants, Inc., and Geum Environmental Consulting, Inc., dated January 2008.

<sup>3</sup> *Butte Ground and Surface Water Restoration Planning Process and Draft Conceptual Restoration Plan*, prepared by the NRDP, dated November 2007; *Revised Restoration Plan for the Clark Fork River Aquatic and Riparian Resources*, prepared by the NRDP, dated November 2007; *Draft Conceptual Smelter Hill Uplands Resource Restoration Plan*, prepared by the NRDP, dated December 2007. These plans are available from the NRDP website at: <https://doj.mt.gov/lands/lawsuit-history-and-settlements-2/>

and Trustee Restoration Councils, with consideration of public comment over a three year period. Likewise, various alternatives to prioritizing areas for the restoration and replacement of aquatic and terrestrial resources were considered in developing the draft prioritization plans issued in 2010. These prioritization plans were the subject of considerable public comment, which triggered additional changes in the designation of aquatic and terrestrial priority areas and additional clarification of the connections between the work in the priority areas and the work already funded/planned for the restoration of injured aquatic and terrestrial areas.

Section 5.3 further explains the additional analysis and narrowing of restoration alternatives that occurred through the development of the Aquatic and Terrestrial Prioritization Plans.

## Summary of Silver Bow Creek Greenway Additional Project Features

**Silver Bow Creek Greenway  
2011 Set Aside Budget Estimate**
**Date: 2/13/2012**

Subarea	Set Aside Budget Remaining Total	2010 Consolidation Budget (1)	Combined Total Budget
SA1	\$ 457,204.60	\$ 1,600,000.00	\$ 2,057,204.60
SA2	\$ 1,051,678.17	\$ 750,000.00	\$ 1,801,678.17
SA3	\$ 1,406,720.26	\$ 150,000.00	\$ 1,556,720.26
SA4	\$ 1,039,132.17	\$ 938,834.54	\$ 1,977,966.71
Total Access Features (2,3)	\$ 3,954,735.20	\$ 3,438,834.54	\$ 7,393,569.74
Total with 20% Design and Contingency (2)	\$ 4,745,682.24	\$ 4,126,601.45	\$ 8,872,283.69
Remaining Ecological (4)	\$ 2,500,000.00	\$ 2,050,097.44	\$ 4,550,097.44
Land Acquisition and Easements	\$ -	\$ 500,000.00	\$ 500,000.00
Operations and Maintenance (5)	\$ 750,000.00	\$ -	\$ 750,000.00
Total Remaining	\$ 7,995,682.24	\$ 6,676,698.89	\$ 14,672,381.13

(1) Adjusted consolidation budget for all Grants from 2001-2009.

(2) Excess funds (if available) may be used to increase the Operations and Maintenance Funds, complete Rocker Depot Renovations as described in the 1998 Preliminary Design, complete connections to Butte via the Butte Hill Line, complete a trail connection to Beaver Dam Park in Opportunity, or assist in constructing a trail connection to Anaconda.

(3) Access Features generally include trails, trailheads, bridges, road and railroad crossings, interpretive areas, signage and other miscellaneous improvements described in the 1998 Preliminary Design Report.

(4) Remaining ecological improvements may include additional stream channel length, soil amendments (i.e., lime, compost, and fertilizers), additional upland and wetland plantings, creation or enhancement of additional wetland areas, enhancing stream channel floodplain access, and other opportunistic ecological enhancements identified during design.

(5) Operations and Maintenance costs may include scheduled maintenance items such as sweeping trails, walks and parking areas, trash removal, vault toilet pumping, toilet cleaning and restocking, painting, potable water testing, landscape maintenance, mowing, weed control, irrigation system maintenance and repair, pavement repair and patching, pavement marking repair and patching, drainage structure cleanout, grading and sealing aggregate trail surfaces as well as remedial maintenance items such as light and fixture replacements, signage replacement and repair, painting, and other miscellaneous repairs





# **APPENDIX A**

## **UPPER CLARK FORK RIVER BASIN EARLY RESTORATION PROPOSALS**

**APPLICATION and INSTRUCTION FORM**

MAY 2012

**PREPARED BY:**

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



# 2012 UCFRB Early Restoration Proposal Application and Instruction Form

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## ACRONYM GUIDE

Advisory Council	UCFRB Remediation and Restoration Education Advisory Council
ARCO	Atlantic Richfield Company
DOI	Department of Interior
EPA	Environmental Protection Agency
NRDP	Natural Resource Damage Program
Tribes	Confederated Salish and Kootenai Tribes
UCFRB	Upper Clark Fork River Basin



# Section 1

## Overview of the Upper Clark Fork River Basin 2012 Early Restoration Proposal Submittal and Evaluation Process

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### INTRODUCTION

This application and instruction booklet is based on the criteria and procedures specified for Early Restoration Proposals in the April 2012 *Final Upper Clark Fork River Basin Interim Restoration Process Plan (Process Plan)*. The application is similar to the application used for the past grant cycles, but with less evaluation criteria to address. The application calls for a fairly high level of detail, so early restoration projects need to be well developed. The application and instruction booklet includes:

- Section 1 – Funding overview section that summarizes application eligibility and submittal procedures;
- Section 2 – Instructions for Completing and Submitting an Early Restoration Proposal Application Form that specifies the steps for completing an application;
- An Application Checklist to be completed and submitted with application materials;
- An “Applicant Information and Proposal Summary Form” to be filled out by all applicants and attached to the front of the completed application;
- Instructions for completing the Proposal Abstract;
- Instructions for completing the Technical Narrative;
- Instructions for completing the Environmental Impact Checklist and Narrative;
- Instructions for completing the Criteria Statements;
- Instructions for completing the Proposal Budget Estimate Forms and Budget Narrative; and
- Supplemental guidance, provided in Attachments A and B, to assist Early Restoration Proposal applicants. These include definitions and a fact sheet on injured aquatic and terrestrial resources. Additional guidance is available upon request or from the NRDP website at [www.doj.mt.gov/lands](http://www.doj.mt.gov/lands).

## **APPLICATION SUBMITTAL**

Applicants shall submit an application containing the following:

- An **original and four (4) additional copies (one copy unbound)** of the application including all supporting documentation.
- Project area and project location maps.
- Color maps or photos that are included in the application must be included in all copies.
- Continuous page numbers and a table of contents.
- A **compiled** version of the application in WORD format, the budget forms in EXCEL format, and an electronic version of the project maps.
- A shapefile of project area (if readily available).

The application material should be sent to:

**State of Montana  
Natural Resource Damage Program  
1301 E. Lockey Avenue  
P.O. Box 201425  
Helena, MT 59620-1425  
Phone: 406-444-0205**

## **APPLICATION DEADLINE**

Application forms for 2012 Early Restoration Proposals must be **received by the NRDP Helena office by 5:00 p.m. Friday, June 1, 2012.**

If you have questions, or if the NRDP staff can help you in any way, please contact the NRDP office at (406) 444-0205.

## **APPLICANT ELIGIBILITY**

Governmental entities, private individuals who are U.S. citizens, and private entities are eligible to apply for UCFRB Early Restoration Proposals.

## **2012 EARLY RESTORATION PROPOSAL ELIGIBILITY RESTRICTIONS**

Eligible projects are those that will improve injured aquatic or terrestrial resources or lost services. This would include natural resource based recreational service projects, provided they offer additional natural resource benefits and not just recreational benefits, as further described in Section 5.5 of the *Process Plan*.

Early restoration proposals must be also be time critical, of extraordinary importance, and capable of being implemented within 12 to 18 months of Trustee funding approval. Applicants for early restoration proposals must demonstrate that their proposals merit an expedited funding decision ahead of completion of the aquatic and terrestrial restoration plans being developed. Given that these restoration plans are expected to be finalized in December 2012, only limited circumstances are likely to warrant an earlier funding decision.

Groundwater restoration projects, including drinking water replacement projects, as well as project development grants and education projects are not eligible for early restoration funding consideration. The *Long Range Guidance Plan* provides a separate funding mechanism for groundwater and education projects. Project development grants do not fit the time critical requirement of Early Restoration Proposals.

## **LOCATION ELIGIBILITY RESTRICTIONS**

The *Long Range Guidance Plan* specifies that early restoration proposals for aquatic and terrestrial restoration projects must be located in:

- 1) the aquatic and terrestrial injured resource areas for which the State made restoration claims, or
- 2) the priority areas identified in the final 2011 aquatic and terrestrial prioritization plans.

Section 5.2 of the *Process Plan* provides further information on the location of these two types of areas.

## **FUNDING SELECTION PROCESS**

### **Minimum Qualification Screening**

To assure that each proposed project meets the minimum qualifications for funding, the NRDP will conduct an initial application screening focused on the following items:

1. That the application is completed fully and accurately, and contains all necessary information.
2. That the proposed project would restore, rehabilitate, replace, or acquire the equivalent of the natural resources injured or services lost as a result of releases of hazardous substances by ARCO or its predecessors that were the subject of Montana v. ARCO.
3. That the proposed project be located within the aquatic and terrestrial injured resource areas in the UCFRB for which the State made restoration claims or in the priority areas identified in the State's aquatic and terrestrial prioritization plans.
4. That the proposed project is time critical, of extraordinary importance, and capable of being implemented within 12 to 18 months of funding approval.
5. That the project will not potentially interfere, overlap, or partially overlap with the remediation or restoration work provided for or planned under existing or anticipated consent decrees, Record of Decisions, or restoration plans.

If the NRDP determines a project does not meet the minimum qualifications for funding, the applicant, within 15 days of receiving written notice of this determination, may appeal the

determination to the TRC. Early restoration proposals, which are consistent with items 2, 3, and 5 above, that are not accepted for early restoration will, at the applicant's request, be considered for inclusion in the subsequent aquatic and terrestrial restoration plans, in accordance with the provisions of the *Process Plan*.

### Application Evaluation

All applications will be thoroughly reviewed and evaluated by the State. Section 6 of the *Process Plan* specifies the criteria the State will use to evaluate early restoration proposals that meet the minimum qualifications. The NRDP will assess the degree to which proposed early restoration projects meet each criterion. If any of the proposed projects meet the minimum qualifications, the NRDP will prepare a draft "Early Restoration Plan" that contains its recommendations for funding or not funding the projects, and the reasons for its recommendations based on its analysis. This draft Early Restoration Plan will be subject to a 30-day public comment period and subsequently considered by the Advisory Council, which will develop its funding recommendations for consideration of the TRC and Governor. Based on input from the NRDP, Advisory Council, TRC, and the public, the Governor will make a final funding decision. The State is hopeful that this process can be concluded by early October 2012.

### Project Implementation and Applicant Responsibilities

Upon approval of an early restoration plan, if any, an applicant will be required to enter into a grant agreement with NRDP before any funds can be expended or received. The model grant agreement available on the NRDP's website indicates the general applicant responsibilities.<sup>1</sup> Detailed scopes of works, budgets, and project schedules are required in all agreements, and must be approved by NRDP before any work, which will be paid for by UCFRB Restoration funds, can begin. Expenses incurred by an applicant before the grant agreement becomes effective will not be reimbursed.

The NRDP will ensure that any approved early restoration projects are implemented by the applicants consistent with scope and budget of the project as approved. Accordingly, prior to beginning construction, and preferably before bid packages are advertised, an applicant will be required to submit final design plans to the NRDP for review and concurrence that the proposed design is consistent with the approved proposal. The State shall have the authority to terminate project funding if it finds that the project design is not consistent with the approved proposal, including the 18 month project completion requirement.

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<sup>1</sup> <http://doj.mt.gov/wp-content/uploads/2011/06/samplegrantagreement.pdf>



# Section 2

## **Instructions for Completing the 2012 Early Restoration Proposal Application**

This section outlines the 6 steps to follow in submitting a completed Early Restoration Proposal Application Form for funding consideration. **All applications must contain continuous page numbers and a table of contents.**

In general, information submitted by the applicant after the due date for applications will not be considered unless such information is specifically requested by the NRDP. Applicants are expected to inform the NRDP during the application review process of any developments that would affect the viability of the proposed project. NRDP staff may contact the applicant to obtain omitted information, to clarify issues, or to verify information contained in the application. **All applications are subject to public review.** If an applicant wishes to keep trade secrets or any other information confidential, this information must meet the confidentiality conditions specified in the Guidance on Confidentiality available upon request or from the NRDP website and be submitted in accordance with the procedures specified therein.

**2012 UCFRB EARLY RESTORATION PROPOSAL APPLICATION CHECKLIST**  
**(\*\*This Checklist Must Be Included With Application Materials\*\*)**

To check for application completeness, be sure that the following items are included in your application. **Make sure the pages have been numbered continuously in your application and you have included a table of contents.**

- \_\_\_\_\_ **Application Materials**
  - \_\_\_\_\_ **Original and four (4) copies (one unbound) including all supporting documentation**
  - \_\_\_\_\_ **Project Area and Project Location Maps**
  - \_\_\_\_\_ **Continuous Page Numbering**
  - \_\_\_\_\_ **Table of Contents**
  - \_\_\_\_\_ **A Compiled (into one file) electronic version of the application in WORD format. Budget forms should be submitted in EXCEL.**
  - \_\_\_\_\_ **A shapefile of project area (if readily available)**
  
- \_\_\_\_\_ **Step 1. An “Applicant Information and Project Summary Form”**
  
- \_\_\_\_\_ **Step 2. A Project Abstract**
  
- \_\_\_\_\_ **Step 3. Technical Narrative**
  - \_\_\_\_\_ **Project Area Map**
  - \_\_\_\_\_ **Project Location Map**
  
- \_\_\_\_\_ **Step 4. Environmental Impact Checklist and Narrative**
  
- \_\_\_\_\_ **Step 5. Criteria Statements**
  
- \_\_\_\_\_ **Step 6. A Proposal Budget using attached EXCEL spreadsheet, including:**
  - \_\_\_\_\_ **a. A Budget Summary Form**
  - \_\_\_\_\_ **b. Budget Detail Forms**
  - \_\_\_\_\_ **c. A Budget Narrative**

**Step 1. Applicant Information and Project Summary Form**

- 1. Name of Applicant(s) \_\_\_\_\_
- 2. Project Title \_\_\_\_\_
- 3. Type of Entity\* \_\_\_\_\_  
(city, corporation, private individual, association, etc.)

(\*Corporation and Foundation applicants are required to submit corporation information as follows: Articles of Incorporation, and Certificate of Good Standing. Partnership applicants are required to submit a Partnership Agreement and a list of the names of the Partners. Limited Liability Company applicants are required to submit Articles of Organization, a list of the members/managers, and Certificate of Good Standing. Non-Profit Associations are required to submit a list of members, Articles of Incorporation and Certificate of Fact. Non-Profit Corporations are required to submit Articles of Incorporation and Certificate of Good Standing. Please attach these documents to this form.)

- 4. Description of Project Location (Attach maps showing project area and project location per instructions under Technical Narrative (Step 3A) \_\_\_\_\_

- 5. Injured Natural Resource(s) and/or Impaired Services to be Restored, Rehabilitated, Replaced or Equivalent Acquired through Project \_\_\_\_\_

6. Authorized Representative: \_\_\_\_\_  
(Name) (Title)

Mailing Address: \_\_\_\_\_  
(Street/PO Box)

\_\_\_\_\_  
(City/State/Zip) (Telephone)

Contact Person\*: \_\_\_\_\_  
(Name) (Title)

Mailing Address\*: \_\_\_\_\_  
(Street/PO Box)

\_\_\_\_\_  
(City/State/Zip)

Phone: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

(\*For Corporate, Partnership, L.L.C., or Cooperative Association applicants, list Registered Agent and Office for Service of Process)

**7. Proposed Funding Sources and Estimated Costs**

On the table below, enter the source and amount of all funding that may be used for this project. Indicate all potential sources of funds that you intend to apply for this project, even if you have not yet applied for the funds or have not yet received a commitment from the source. Indicate whether matching funds are cash or in-kind.

2012 Proposed Funding Source Form				
UCFRB Restoration Fund			Amount in (\$) Dollars	Funding Percentage
Requested Amount → → → → →				
Matching Funds				
Matching Fund Source	Cash Matching Funds	In-kind Matching Funds	Amount in (\$) Dollars	Funding Percentage
A				
B				
C				
D				
E				
F				
<b>Total Cash Match</b>			Total Cash % →	
<b>Total In-kind Match</b>		→ → → → →	Total In-kind % →	

(Lightly shaded areas are automatically calculated on the electronic version of this form)

**Estimated Total Project Cost**

**8. Private (non-Governmental) Applicant Financial Information**

- a. Are there any lawsuits, judgments, or obligations pending for or against you? \_\_\_\_\_
- b. Have you ever declared bankruptcy? \_\_\_\_\_
- c. Are any of your tax returns delinquent or under dispute? \_\_\_\_\_
- d. Any unpaid deficiencies? \_\_\_\_\_
- e. Are you a party to a lawsuit? \_\_\_\_\_
- f. Do you have any other contingent liabilities? \_\_\_\_\_
- g. Do your current and deferred liabilities exceed the value of your assets? \_\_\_\_\_

**Explain all YES answers in a statement attached to this form.**

**9. Certification for Individuals or Private Entities**

Individuals or private entities requesting funds must sign the following certification.

<b>Certification for Individuals or Private Entities</b>			
I (We) the undersigned, have provided this financial information as part of my (our) application for an Early Restoration Proposal. I (We) certify that the statement is complete and accurate to the best of my (our) knowledge and I (we) authorize the State of Montana to investigate my credit worthiness and any of the matters described above.			
Individual(s)			
_____	_____	_____	
Name	Signature	Date	
_____	_____	_____	
Name	Signature	Date	
Private Entities			
_____	_____	_____	_____
Name of Authorizing Agent	Federal Tax ID No.	Signature	Date

**10. Authorizing Statement**

An authorized agent/agents representing the applicant must by his/her signature indicate that the application for funds and expenditure of matching funds, as represented, is officially authorized.

<b><u>Authorization</u></b>	
I hereby declare that the information included in and all attachments to this application are true, complete, and accurate to the best of my knowledge, and that the proposed project complies with all applicable state, local, and federal laws and regulations.	
I further declare that, for _____ (Project Sponsor), I am legally authorized to enter into a binding contract with the State of Montana to obtain funding if this application is approved. I understand that the Governor must authorize funding for this project.	
_____	_____
Project Sponsor	Date
_____	_____
Authorized Representative (signature)	Title
_____	
Fed Tax Id. No.	



## **Step 2. Proposal Abstract**

Prepare a clear and concise description of your proposal, identifying its priority location, describing its time-critical and extraordinary importance nature meriting expedited funding decision ahead of completion of the aquatic and terrestrial restoration plans, and its benefits to priority aquatic or terrestrial resources. Also include schedule (implementation within 12 to 18 months) general information on costs, tasks involved in the project, and project partners. This proposal abstract **as submitted** will be used to inform reviewers and the public about your proposal. Your abstract should not exceed two typed pages. Example abstracts are available under the Guidance Section on the NRDP website (<http://doj.mt.gov/lands/>).

On your own paper, use the following format for your abstract.

<p><b>Proposal Abstract</b></p> <p><b>Applicant Name:</b> _____</p> <p><b>Project Title:</b> _____</p> <p><b>Project Description and Benefits to Restoration:</b></p>
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### **Step 3. Technical Narrative**

Describe the work to be done with the UCFRB Restoration funds and with any matching funds committed to the project. This description must provide sufficient detail to verify that the project is located in eligible priority areas, is time critical and of extraordinary importance, technically feasible (including ability to implement project within 12 to 18 months) and will achieve its objectives. This information will be used as the scope of work for a contractual agreement for implementation of an approved Early Restoration Proposal.

Explain the existing situation, the problem your project addresses, the project's time critical nature, how it will improve aquatic or terrestrial resources or lost services, and fits with the aquatic or terrestrial prioritization plans. Provide the goals and objectives of the project. Identify and discuss the specific tasks that will be carried out through project implementation. Identify and discuss why the project would not be feasible if not funded through this process this year. Provide a project schedule. Use the "Outline for Technical Narrative" on the following pages to organize your presentation and to ensure that nothing is omitted from your discussion. It is important that all basic information requested in the "Outline for Technical Narrative" be provided in the main text of the application, not the appendices. Any appendices should provide ancillary supporting information and should not serve as the primary source of information. If critical information is buried in the appendices, the applicant risks that it will not be given due consideration in the evaluation of the Early Restoration Proposal.

Organize the technical narrative of your application based on the major headings in the outline (e.g., Project Location, Project Need, Project Goals and Objectives), but DO NOT repeat any of the explanatory text contained in the application under these headings in your application. For example, under the "A. Project Location" subheading, do not repeat explanatory text that describes the two types of needed maps.

For portions of this outline, more detailed descriptions are provided on what information is needed for projects that seek to improve aquatic and terrestrial resources. The NRDP's "Guidelines for Project Applications Involving Aquatic and Terrestrial Resources and Public Recreation" also includes helpful hints in completing the technical narrative for these types of projects. This document is available upon request or from the NRDP website. In addition, Attachments 5-2 and 5-3 of the *Process Plan* offer guidance on aquatic and terrestrial restoration activities.

The Technical Narrative should not include budget information, which is requested under Step 6. Please use the following format in presenting your Technical Narrative on your own paper:

#### **Technical Narrative**

**Applicant Name:** \_\_\_\_\_  
**Project Title:** \_\_\_\_\_  
**(Text of Technical Narrative)**

## **OUTLINE FOR TECHNICAL NARRATIVE**

### **A. Project Location – *Where is the project located?***

1. Provide at least two maps or aerial photographs. One aerial photo/map should be 8.5 X 11 inch in size that shows the project location in relation to a well-known landmark, such as a town or city. The second aerial photo/map should be at an appropriate scale that shows the details of the project as necessary. Please provide any additional maps that may be needed to identify and explain your proposal. All maps/aerial photos need to include pertinent topographic and geographic information, scale, and north arrow.
2. Specifically describe the project's location as it relates to the aquatic and terrestrial injured resource areas, or the priority areas identified in the State's aquatic and terrestrial prioritization plans.

### **B. Describe Project Need and Exigency/Define the Problem – *Why is there a problem?***

1. Specifically describe the problem that this project will address. What are the identified and potential causes of the problem or what circumstances precipitated the need for the project? Of these, what are the limiting factors – those factors that are most responsible for the causes of the current condition?
2. Which of these factors has been quantified and to what degree? Describe any uncertainty about the importance of these factors.
3. Describe any other ongoing or past efforts to address the needs of the project, including any unsuccessful past efforts.
4. Explain why your proposal is time critical and of extraordinary importance such that it merits an expedited funding decision ahead of completion of the aquatic and terrestrial restoration plans being developed.

### **C. Describe the Project Goals and Objectives – *What is the Proposal's Purpose?***

Note: The success of a project is determined upon achieving the stated goals and objectives. If possible, all goals and objectives must be measurable, either quantitatively or qualitatively. Under the Monitoring Plan (item D9), applicants are asked to address the link between the goals and objectives and the proposed monitoring tasks.

1. What are the goals of this project, or the problems you intend to solve through implementation of this project?
2. What are the specific project objectives you plan to accomplish in order to achieve these goals?
3. What quantitative and/or qualitative results, if any, will this project achieve?
4. How will it improve injured aquatic or terrestrial resources or lost services?

Note: A goal is a broad statement that identifies the desired future condition or end toward which an endeavor is directed. Objectives are descriptions of measurable outcomes or specific desired end points that are used to determine whether or not the goal has been successfully accomplished. Tasks are the steps needed to reach desired end points/future conditions. Goals

and objectives are identified in this section of the Technical Narrative; tasks are identified under the next section.

**D. Describe the Project Implementation Plan – *How will the proposal be conducted?* Describe in chronological order the individual tasks or activities necessary to accomplish the work under each objective.**

1. Describe the overall approach to project implementation, and generally describe how the project is capable of being implemented within 12 to 18 months of Trustee funding approval.
2. Identify each of the project phases, and the specific tasks comprising each phase and relate them to the project goals and objectives. For construction projects, discuss each phase of construction, including any planning or design activities that must be completed before initiating any construction activities. Indicate the level of design that has been completed for the project (e.g., conceptual, 60%, 90%) that is the basis for construction cost estimates. For land acquisition projects, describe the status of the various steps needed to complete the transaction, such as the title commitment, appraisal, necessary reviews by county planning entities or other governmental entities, or any necessary environmental assessments. Describe the tasks proposed to move from the current condition to the desired future condition and how the proposed tasks will impact the current condition in a demonstrable manner.
3. Identify the project staff for the particular tasks and quantify the staffing time necessary to complete the project.
4. Identify the contracted services necessary to complete the project. NRDP procurement guidance (<http://doj.mt.gov/lands/>) requires that most contracted services above \$5,000 be competitively bid. Indicate whether you have conducted the competitive procurement process for such services or plan to competitively bid such services after the Governor's funding decision.
5. Identify any permits, regulatory approvals, or property access agreements that have been obtained or will be needed to complete the project. If you propose work on private land that will cause ground disturbance, provide an updated property ownership map and documentation of the landowner's consent to the proposed work that would disturb private land. Ownership information should be verified through the State Cadastral database (<http://nris.mt.gov/nsdi/cadastral>).
6. Indicate whether the project is a phase of a larger project for which additional funding is needed and, if so, the targeted funding sources. Examples include a stream restoration project on a particular reach that is one part of an entire stream restoration effort.
7. Describe the measures that will be undertaken to ensure long-term effectiveness.
  - a. Describe the measures that will be undertaken to ensure that the intended resource or recreational improvements will be maintained in the long-term. If the work will occur on private land, explain what measures will be used to assure that future land

- management activities will not disrupt areas that will be restored and/or diminish the projects benefits. Include documentation of the current landowner's commitment to conduct these measures. For example, if the project will involve a grazing management plan to reduce impacts to riparian areas, provide documentation of the landowner's intent to comply with this plan. [Note: For restoration work conducted on private land that requires protective measures over a certain time period, the NRDP contract agreement will require the project sponsor to notify the NRDP prior to change in property ownership during that time period. If the new owner does not agree to protect the investment in restoration for the period specific in the NRDP contractual agreement, then the project sponsor may be required to reimburse all or part of the project costs. For additional guidance on this issue, please consult the NRDP's "Guidance for Work on Private Lands," which is available upon request or from the NRDP website.]
- b. For aquatic and terrestrial construction projects, identify the service life of the proposed improvements, indicate what routine maintenance will be performed to upkeep the improvements in the long-term, and indicate what entity is committed to performing and funding these routine maintenance activities. Provide documentation, such as a letter, from that entity verifying this future commitment.
8. Describe Methods and Technical Feasibility of the Proposed Project.
    - a. Provide a detailed description of methods to be used to conduct specific tasks, including appropriate citations/documentation.
    - b. Describe how this approach has been used successfully to address similar problems, if it has.
    - c. What are the certainties and uncertainties associated with any innovative approaches to the proposed project?
    - d. Are there any uncertainties in the proposal that require further resolution? Please discuss these uncertainties, including uncertainties associated with a proposal that is based on a conceptual design.
    - e. Are there any data gaps and how do you propose to address them?
    - f. Describe any potential complications and how they may affect the implementation time schedule.
  9. Describe the Monitoring Plan.
    - a. Describe proposed quantitative (e.g., sampling parameters) and/or qualitative (e.g., photo surveys) monitoring activities. Include a description of the link between the goals and objectives specified under Item C with the proposed monitoring tasks. If you have a project for which the success can be determined without monitoring (e.g., a land acquisition), or for which the monitoring needed to document success would not be cost-effective, provide such justification.
    - b. Describe what monitoring data will be collected, why, how, and by whom.
    - c. Describe how problems will be addressed if monitoring indicates objectives are not being met.
    - d. How does this monitoring effort consider or coordinate with other monitoring activities being conducted in the Upper Clark Fork River Basin?

**E. Provide a Project Time Schedule – *When will the proposal be done?***

The format of the project schedule may be either a list of activities, table, or flow chart. The schedule should provide the State with a time frame for the project from the starting date through completion of the project (project implementation within 12 to 18 months). The schedule should specifically describe how the project is capable of being implemented within 12 to 18 months of Trustee funding approval. Tasks or activities should be listed in the expected completion sequence. If particular tasks must be completed prior to others, this should be indicated. In planning a schedule, keep in mind that successful applicants must enter into a contractual agreement with NRDP before work covered by Restoration Funds can begin on a project. If desired, include the schedule with the list of tasks (Item D).

For example, the following expected dates in the project schedule may be applicable to some proposals:

1. Expected dates for submittal and receipt of all required permits, licenses, agreements, and approvals;
2. Expected dates for advertising bids and requests for proposals;
3. Expected contract award dates;
4. Expected dates that each task or activity will begin and end; and
5. Expected project completion date.

**F. Describe Qualifications of the Project Team – *Who will be conducting the work?***

Briefly summarize the skills, qualifications, and experience of the project team.

**G. Provide Supporting Technical Documentation**

1. Provide a list of references and literature citations pertinent to the project and the technical approach.
2. Provide a list of unpublished materials relevant to the technical feasibility of the project and indicate where these materials are located. Be prepared to provide copies of these materials upon request.
3. Provide copies of easements, right-of-way, or other access agreements, and copies of other documents required to complete the project. If these are not available, outline what will be pursued as part of project implementation, and provide copies of any boilerplate agreements that will be followed.

**This supporting documentation should be provided as a separate appendix to the main text of the application.**



## **Step 4. Environmental Impact Checklist and Narrative**

All applicants must evaluate the proposal's potential impacts to the physical and human environment. Analysis of these potential impacts can alert applicants to considerations in the location, design, or construction of projects that will help to avoid adverse environmental impacts or expensive mitigation or construction costs. The State will use the information provided in this checklist and narrative, along with any necessary supplemental information, to assure that all adverse environmental impacts and reasonable alternatives have been adequately characterized and considered during decision making.

Provide a narrative evaluation of the proposal's potential impacts to the physical and human environment. This includes an analysis of potential socio-economic impacts, such as the changes in property tax revenues, employment, and agricultural, commercial or industrial production that might result from the project. Use the checklist on the following pages as a guide in your consideration of these impacts. The discussion should include direct and secondary adverse impacts that could arise from the project in the short- or long-term, including those that involve resources that are not a part of the project. Direct impacts are those that occur at the same time and place as the action that triggers the event. Secondary impacts are those that occur at a different location and/or time than the action that triggers the event.

- A. Discuss in the narrative those items identified on the checklist where a potentially adverse impact will occur, where a permit or approval will be required, or where mitigation will be required. Characterize the degree of significance of these impacts (e.g., minor, moderate, or major) and whether they are short- or long-term, direct or secondary.
- B. Where a potentially adverse impact to the environment or human health is projected, the applicant must provide the following:
  - 1. A description and analysis of any reasonable alternatives that would avoid the impact and a justification for the selected alternative; and
  - 2. An evaluation of appropriate short- and long-term measures to mitigate each potentially adverse impact and a discussion of the effects of those mitigation measures on the proposed project.

As part of its analysis of impacts to human health and safety, the State will determine if protective measures should be added to the project to ensure safety.

**Instructions For Completing the Environmental Impact Checklist:** Complete the attached Environmental Impact Checklist and Narrative for the proposed project. The NRDP will review the information provided and prepare its own evaluation to determine whether further information is required. For each impact category, five possibilities are listed on the form:

1. No Impact or Not Applicable to this project
2. Potentially Adverse Effect
3. Potentially Beneficial Impact
4. Agency Approval or Permits Required
5. Mitigation Action(s) Required

Space is provided next to each of the subject areas. Check the appropriate box that characterizes possible impacts. In some cases, it may be appropriate to indicate more than one possibility.



**Environmental Impact Checklist (use this format)**

<b>Impacts to Physical Environment</b>	<b>No Impact</b>	<b>Potentially Adverse</b>	<b>Potentially Beneficial</b>	<b>Permits or Approvals Required</b>	<b>Mitigation Required</b>
1. Soil suitability, geological or topographic constraints					
2. Air quality					
3. Groundwater resources and quality					
4. Surface water quality, quantity and distribution systems					
5. Floodplains and floodplain management					
6. Wetlands protection					
7. Terrestrial and avian species and habitats					
8. Aquatic species and habitat					
9. Vegetation quantity, quality and species					
10. Unique, threatened or endangered species or habitats					
11. Unique natural features					
12. Historical and archeological sites					
13. Aesthetics, visual quality					
14. Energy resources, consumption, and conservation					

Comments: (use additional pages if necessary):

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<b>Impacts to Human Environment</b>	<b>No Impact</b>	<b>Potentially Adverse</b>	<b>Potentially Beneficial</b>	<b>Permits or Approval Required</b>	<b>Mitigation Required</b>
15. Human Health and Safety					
16. Agricultural production (grazing, forestry, cropland)					
17. Access to recreational activity, public lands, open space					
18. Nuisances (odor, dust, glare)					
19. Noise (e.g. separation between housing and construction areas)					
20. Hazardous substance handling, transportation and disposal					
21. Local and state tax base and tax revenue					
22. Employment, population, or housing					
23. Industrial and commercial production					
24. Land use compatibility; Consistency with local ordinances, or solutions, or plans					
25. Demands for governmental services (e.g. site security, fire protection, community water supply, wastewater or stormwater treatment, solid waste management)					
26. Transportation networks and traffic flow					
27. Social structures and mores					
28. Cultural uniqueness and diversity					

Comments: (use additional pages if necessary):

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## **Step 5. Instructions on How to Complete Criteria Statements**

Section 6 of the *Process Plan* details the criteria that will be used to evaluate Early Restoration Proposals for funding. Applicants need to address each applicable criterion in individual criteria statements. **For each criterion, please provide sufficient information about the proposed project that will allow the State to evaluate your proposal as it relates to that specific criterion.**

The criteria that applicants are to address in their criteria statements are generally discussed on the following pages, and specific issues that should be addressed relevant to each criterion are listed. The issues discussed are suggested to help you organize your statement but are not exclusive. The discussion indicates how certain criteria may favor or disfavor a project in the State's overall evaluation. Some overlap of issues may be encountered, and applicants may cross-reference other sections of the application where appropriate to avoid duplication of effort. Additionally, depending on the type of proposal, some of the suggested issues for discussion may not be applicable to a particular proposal. Four of the criteria require information that may not be readily available to applicants. For these four criteria, applicants should describe available pertinent information of which they are aware to assist the State in its evaluation of these criteria.

On your own paper, please follow this format and be sure to address each criterion that is applicable to your proposal:

### **Criteria Statements**

**Applicant Name:** \_\_\_\_\_

**Project Title:** \_\_\_\_\_

1. (insert name of criterion): **[text]**
  2. (insert name of criterion): **[text]**
- (Continue format for all applicable criteria)**

## **1. TECHNICAL FEASIBILITY**

This criterion is addressed in the technical narrative under Step 3; therefore, no additional response is required here.

## **2. RELATIONSHIP OF EXPECTED COSTS TO EXPECTED BENEFITS**

This statement should provide information regarding whether a project's costs are commensurate with the benefits it provides. The benefits described should include a discussion of the applicant's view of the project's extraordinary importance. The State will evaluate all costs associated with the project, including costs other than those needed simply to implement the project, and the benefits that would result from a project. Application of this criterion is not a straight cost/benefit analysis, nor does it establish a cost-benefit ratio that is by definition unacceptable. If cost and benefits of the project cannot be quantified, provide a narrative discussion of the cost and benefits.

- A. Describe and, if possible, quantify the direct and indirect costs of the project.
- B. Describe and, if possible, quantify the direct and indirect benefits of the project
  - 1. Describe direct and indirect benefits to injured natural resources located in the aquatic and terrestrial injured resource areas, or in the priority areas identified in the State's aquatic and terrestrial priority plans.
  - 2. Describe direct and indirect benefits to lost services or replacement services, including any increased public access provided by the proposal. If possible, quantify the number of public users that will benefit from the improvements associated with the proposal. For example, if your proposal involves land acquisition for wintering elk, provide data on the existing elk winter range in the area.
  - 3. Describe other direct and indirect public benefits.

Benefits and costs of the project are "direct" if they accrue to a targeted group of people and/or the natural resources and services that are affected by the project. "Indirect" benefits and costs accrue to the general public and resources and services that are affected by the project but are not specifically targeted.

- C. Indicate the timeframe over which these identified benefits are expected to accrue.

## **3. COST-EFFECTIVENESS**

This statement should include information regarding whether a particular project accomplishes its goal in the least costly way possible compared to alternatives. In applying this criterion, the State will consider all the benefits and costs associated with a project compared to alternative solutions. The descriptions of each alternative do not have to be as detailed as the description of the proposed project, but enough information must be provided to demonstrate that the alternatives to the project were investigated and that the proposed project provides either greater benefits at the same or similar costs or similar benefits at a lower cost.

- A. Describe the alternatives that will accomplish the same or substantially similar goals as that of the proposed project. These alternatives could accomplish the goals of the proposed project, but in a different way, under a different time frame, or with different costs and benefits. A discussion of a minimum of two to three alternatives is expected. Include the no action alternative (i.e., natural recovery), if applicable; however, in most cases the no action alternative would not accomplish project goals. Example alternatives for typical Restoration projects include:
- For a revegetation project: Address different levels of plantings, such as planting 50 acres of a riparian area with trees and shrubs compared to planting only 25 acres or planting seeds only. Also refer to the additional guidance for terrestrial restoration provided in Section [5.5] and Attachment 5-3 of the *Process Plan* that addresses the types of revegetation project activities considered to be the most cost-effective.
  - For a stream restoration project: Address the different levels of stream restoration from those that strictly involve changes in land use practices and fencing to those that involve major stream channel reconstruction. Consider the choice of working on one section of the stream vs. multiple sections of the stream (e.g., reconstructing 5 miles of streams over two years for \$1,000,000, or alternatively reconstructing only 2.5 miles of the most impaired parts of the stream over a one year time frame for \$500,000). Refer to the additional guidance for aquatic restoration provided in Section 5.5 and Attachment 5-2 of the *Process Plan* that addresses the types of stream restoration activities considered to be the most cost-effective.
  - For a land acquisition project: Address the alternatives of fee title acquisition vs. easement acquisition or a combination of an easement/fee title on parts of the property.
- B. Compare the benefits and costs of each of the alternatives and provide justification for the selection of the preferred alternative. Provide any information on the cost-effectiveness of implementation as an Early Restoration action rather than upon completion of the aquatic and terrestrial restoration plans. Costs of the alternative approaches should be detailed enough to compare to costs of the preferred alternative provided under Step 6. For example, if you are proposing to remove tailings, compare the costs of consolidating the tailings in an on-site repository to disposal at an off-site facility. If you have a project for which such a detailed cost comparison of approaches is not feasible, such as a land acquisition project, then explain such limitations to comparing alternatives.
- C. If the alternative selected is not the lowest cost alternative or does not provide the greatest net benefit of the alternatives analyzed, provide the reasons for the selection of this alternative.
- D. Identify project matching funds, if any, to be used directly on the selected alternative.

#### **4. ADVERSE ENVIRONMENTAL IMPACTS**

This criterion is addressed under Step 4 in the Environmental Checklist and Narrative; therefore, no additional response is required here.

## **5. RESULTS OF SUPERFUND RESPONSE ACTIONS (Readily Available Information)**

This statement should include a discussion of the results or anticipated results of Superfund response actions (defined on p. A-1) underway, or anticipated, in the UCFRB that are relevant to the proposed project. Numerous response actions are ongoing and additional response actions are scheduled to begin in the next several years, continuing for many years into the future. Application of this criterion will require the State to assess, given the inherent uncertainties associated with this task, what response actions it will entail and to make projections as to their effects on resources and services. The State will evaluate what is necessary in the way of restoration of resources and services in light of ongoing and planned response actions and evaluate the degree of consistency between a proposed project and response actions. Projects that duplicate or may duplicate the effects of a response action on natural resources or services will be disfavored. Projects in Superfund operable units where the remedial design has not been completed will also be disfavored if a potential exists for the proposed restoration activities to be accomplished under remediation or to interfere with proposed remediation.

Given the multiple response actions underway or anticipated and multiple entities involved in those response actions, it may be difficult to address this criteria. Therefore, applicants are requested to provide readily available information they have on this criterion and the State will collect any necessary additional information.

- A. Identify and describe any ongoing and planned response actions of which you are aware that affect or may affect the natural resources or services addressed by your proposal.
- B. Describe how your proposal coordinates with ongoing or planned response actions of which you are aware.
  1. What steps are included in your proposal to account for ongoing or planned response actions?
  2. Does your proposal augment an ongoing or proposed response action? If so, how?
  3. Will implementation of your proposal in any way require that ongoing or proposed response actions be altered?

## **6. RECOVERY PERIOD AND POTENTIAL FOR NATURAL RECOVERY (Readily Available Information)**

The applicant should evaluate whether the resource and/or services their proposal addresses can recover naturally and estimate how long natural recovery would take. This analysis will help to place the project's benefits in perspective by comparing the length of time it will take for the resource and/or services to recover if the project were implemented compared to the "No Action-Natural Recovery Period" alternative (defined in Attachment A).

The State recognizes the difficulty some applicants may have in predicting the timeframes for recovery to baseline conditions with the project and without any additional action beyond remedy. Provide time ranges (e.g., 1-10 years vs. 10-50 years vs. 50-100 years, or longer) and identify any uncertainties. Applicants are requested to provide readily available

information they have on this criterion and the State will collect any necessary additional information.

- A. Evaluate the potential for natural recovery of the natural resource and/or services addressed by your proposal.
- B. Describe how your proposal would enhance the time frame for natural recovery.

**7. FEDERAL, STATE, AND TRIBAL POLICIES, RULES AND LAWS (Readily Available Information)**

This criterion entails the State’s evaluation of the degree to which the project is consistent with applicable policies of the State, local government, the federal government, and Indian tribes; with applicable laws and rules; and with consent decrees. As part of the evaluation of this criterion, the State will assess whether a project would potentially interfere, overlap, or partially overlap with the restoration work covered under current or planned consent decrees or restoration plans. Because these requirements are extensive, applicants are required only to address the following items in this criteria statement:

- A. Identify any permits or other regulatory approvals that have been obtained and those that must be obtained to complete the project, and include pertinent dates.
- B. Discuss coordination with local entities.
  - 1. What efforts have been made to contact local governmental entities regarding the project?
  - 2. What specific measures will be taken to ensure that the project is coordinated with local governmental activities and complies with local governmental requirements?
  - 3. If your project involves land management activities, explain how you have or will meet the state and local weed management requirements and what efforts you have made or will make to coordinate with the local Weed Control District.
- C. Discuss how the proposal is affected by and is consistent (or inconsistent) with any other applicable laws and rules, policies, or consent decree requirements of which you are aware. If necessary, the State will supplement information provided by applicants.

**8. RESOURCES OF SPECIAL INTEREST TO THE TRIBES AND DOI (Readily Available Information)**

Pursuant to a Memorandum of Agreement (MOA) with the U.S. Department of Interior (DOI) and the Confederated Salish and Kootenai Tribes (Tribes),<sup>2</sup> the State is to pay particular attention to natural resources of special interest to the Tribes and/or DOI, including particular attention to natural resources of special environmental, recreational, commercial, cultural, historic, or religious significance to either the Tribes or the United States. This statement should include a discussion of any potential impacts the proposal may have on resources of special

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<sup>2</sup> This MOA is available from the NRDP website at:  
<https://doj.mt.gov/wp-content/uploads/2011/06/1998moatribes.pdf>

interest to the Tribes and the United States DOI. To assist the State in evaluation of this criterion, applicants are requested to identify any of these resources of special interest of which applicants are aware.

- A. Describe any Tribal cultural resources and religious sites or natural resources of special interest to the Tribes (particularly “Tribal Cultural Resources” or “Tribal Religious Sites,” as those terms are defined in the MOA) or DOI relevant to your proposal of which you are aware. Document your source of information. Indicate the results of any cultural resources database searches conducted, such as a search conducted through the Montana Natural Resource Information System’s Montana Digital Atlas (<http://maps2.nris.state.mt./mapper>) (under county information) or your intent to conduct such searches following funding award.
- B. Describe what measures are included in your proposal to account for any of these resources or religious sites, including any planned further consultation with the Tribes and DOI during project implementation. If the proposal is funded, the project contract agreement will require the project sponsor to adhere to the procedures specified in the Tribal/DOI MOA pertaining to any undiscovered and undocumented historic properties encountered during project construction.

## **9. NORMAL GOVERNMENT FUNCTIONS**

The UCFRB Restoration Fund will not be used to fund activities for which a government agency (local, state or federal) would normally be responsible or that would receive funding in the normal course of events. With this criterion, the State will evaluate the likelihood that a particular project would be implemented if recovered natural resource damages were not available. The UCFRB Restoration Fund may be used to augment funds normally available to government agencies if such cost sharing would result in implementation of a restoration project that would not otherwise occur through normal agency function.

- A. Describe what proposed activities, if any, are those for which a governmental agency is legally or otherwise would normally be responsible for, or for which a governmental agency could receive funding in the normal course of events.
- B. If your project augments funds normally available to government agencies, explain why the project cannot be implemented without Restoration funds.

## **10. PRICE (applies to acquisition projects only (e.g., land, water rights))**

Acquisitions may only be approved when the price to be paid for the property is equal to or less than fair market value. In this criteria statement, explain the basis for the price of the property to be acquired and how it compares to its fair market value. Consideration of this criterion will likely require the State to conduct its own appraisal of the property. If the appraisal process for an acquisition was not subject of initial State review and approval, the State will, at a minimum, conduct a review appraisal and may conduct a full appraisal. Normally an independent appraisal by a qualified appraiser, which complies with the *Uniform Standards of Professional Appraisal Practice*, will be required to verify the property’s value.



- A. Explain the basis for the price of the property and how it compares to market value.
- B. Indicate any encumbrances on the property. The determination of encumbrances should be made with the assistance of a title report on the property issued by a title insurance company.
- C. Attach any appraisal documents as well as any other documents or agreements (e.g., title reports, documents evidencing encumbrances on the property, purchase, option, or easement agreements) that are relevant to the project.
- D. Provide documentation of the property owner's commitment to the project, such as a letter. Also, identify any financial relationship that exists between the applicant and the property owner.



## **Step 6. Proposal Budget**

Complete the **budget estimate forms** and **budget narrative**. Budgets should estimate costs as completely and accurately as possible. Complete these forms on the EXCEL spreadsheets provided with the application. These spreadsheets are available electronically as a separate file from the NRDP website. There are complete example budgets also available on the website. Complete the Budget Detail Form first. The numbers from this form will be carried over to the Budget Summary Form. The tasks indicated in the budget sheets should match the tasks outlined in the Technical Narrative (Step 4).

The State will only reimburse costs that relate directly to the proposed project and that would only be incurred if the project were to be implemented. The Budget Summary Form and Budget Detail Form include major expense categories. The information contained on these forms will be used to negotiate a contract between the State and the applicant.

### **A. BUDGET ESTIMATE**

Use the attached Budget Summary Form and Budget Detail Form to complete your budget estimate. Information regarding the following expense categories should be included in your budget estimate. **Submit both the Budget Summary Form and Budget Detail Form in your applications.** If your project is a multi-year project, costs must be broken down by year.

1. **Salaries and Wages** – Identify each employee required to complete the project. List all participants by name and position, or by position only if not yet hired. List the estimated number of hours each employee will work and the hourly wage rate. Include in this category clerical, bookkeeping, and other support staff services that would be reimbursed by UCFRB Restoration Funds.
2. **Employee Benefits** – Enter the employee benefits to be paid and the rate or method by which they were calculated.
3. **Administrative Fees, Overhead, or Indirect Fees** – Preferably, any administrative costs, such as those incurred to handle project financial accounting, reporting, and contracting matters, should be charged as a direct, project-specific labor cost based on actual time spent that is logged and documented via time sheets, rather than on a percentage fee basis. If your project includes an administrative fee that is based on a certain percentage of total project costs, identify that fee and specify what costs/services are covered under that overhead and provide backup documentation on the validity of this fee, such as an audit of the fee. For overhead or indirect costs, include an explanation for how these costs are charged on a project-specific basis and provide backup documentation on the validity of these fees, such as an audit of an agency's indirect rate.
4. **Contracted Services** – Identify any services to be provided by others hired under contract for professional services or construction. This category includes, but is not limited to, consultant and construction services, materials, equipment, data processing, printing, and laboratory testing. List each specific service to be performed and the wage rate associated with it.

Design/Contingency Costs for projects involving construction: Construction service contracts should include a contingency to cover unexpected expenses. Applicants for these projects should research current market trends for construction materials and labor and adjust costs appropriately. Provide documentation for the choice of contingency rate, which should not exceed 20%. Many fixed cost items do not need a contingency applied to them. Also specifically identify the engineering design costs for construction type projects. Engineering design costs can be based on an estimated level of effort by project engineers or estimated based on a percentage of construction costs. For projects that have standard designs, an engineering design cost of no more than 10% is suggested. For projects that do not have standard engineering designs, a design cost of no more than 15% is suggested.

5. **Supplies and Materials** – List major office supplies and materials necessary to prepare, conduct, or construct this project. These items are generally consumable commodities purchased for inventory or immediate use by the applicant and cost less than \$250. List the costs of all major items.
6. **Communications** – Include telephone, postage, mailing, and advertising costs in this category.
7. **Travel** – List only costs for travel that is essential to conduct the project. Detail the expected travel destination, the purpose of the travel, the number of people traveling, and the number of trips to be made. Travel rates may not exceed the current state employee rates for meals, lodging, and mileage.
8. **Rent and Utilities** – List the terms and costs specific to the project that are associated with buying or renting office space, storage, computer rental, other office equipment use, additional project space requirements, and applicable utility expenses. Include an explanation of the methodology for how these costs are charged on a project-specific basis.
9. **Equipment** – Include in this category articles leased or purchased for use on the project by the applicant. These items generally are of a non-consumable nature, have an estimated life of more than one year, and cost greater than \$500. List all necessary items and their costs. The NRDP has an equipment policy that is available on NRDP website or upon request by NRDP.
10. **Miscellaneous** – Identify any other costs required to complete the project. List any other project costs, such as repairs or maintenance, that have not been addressed in other budget categories. The State will not pay interest on loans taken out to cover project expenses. Explain the basis for any contingency costs, beyond the contingency costs associated with construction projects, which is to be addressed under item # 4.

## **B. BUDGET NARRATIVE**

The budget narrative must clearly demonstrate that the project can be completed within the proposed budget. To accomplish this goal, address the following issues.

1. Provide a general discussion of the spending plan, and explain each budget item in relation to the total budget.
2. The budget narrative should clearly state the assumptions used to develop the proposed budget.
3. Include the sources of all cost estimates in the budget narrative.
4. Fully justify project expenditures reported on the budget forms.
5. Describe the basis for your computations.
6. Describe what contingencies exist for cost-overruns, such as construction contingencies.
7. Indicate what mechanisms of financial assurance, such as letters of credit or performance bonds, have been or will be obtained.

**Matching Funds:** The budget forms should indicate the cash and in-kind matching funds and the budget narrative should describe your efforts toward securing those funding commitments. The State will calculate the cash and in-kind matching fund contributions separately by determining the percentage of the total project costs for activities under the project's scope of work to be funded by cash or in-kind contributions from other sources besides Restoration Funds. If a project is approved, the applicant is obligated to contribute the indicated matching fund amount to the project. Please address the following issues:

1. If you applied to other funding agencies, give the date of your application, the date a funding decision is expected, and whether you requested a grant or a loan. Provide documentation.
2. Provide verification of committed matching funds, such as an award letter.
3. Indicate whether the matching funds are cash or in-kind contributions.
  - Cash contributions are project-specific contributions provided by an individual or organization for which documentation can be provided of a cash transaction by the applicant, project sponsors, or partners.
  - In-kind contributions are project-specific contributions of a service or a product provided by an individual or organization where the cost cannot be tracked back to a cash transaction by the applicant, project sponsors, or partners. Examples of in-kind expenses include donated labor and equipment.
  - For more information on required match documentation, refer to guidance on the NRDP website.
4. Identify any loans used as matching funds and indicate the planned mechanism to pay back the loans.
5. Include any other information that would help the State assess your financial commitment to project completion.

If the project will require funding beyond the period for which funds are requested, include a plan describing how subsequent funds will be obtained.

Please use the following format in presenting your Budget Narrative on your own paper:

## **Budget Narrative**

**Applicant Name:** \_\_\_\_\_

**Project Title:** \_\_\_\_\_

[text]

2012 Application		BUDGET DETAIL FORM				
EXPENSE CATEGORY		UCFRB RESTORATION FUND	MATCHING FUNDS			TOTAL
			Cash	In-Kind	Subtotal	
1	SALARIES AND WAGES (List all worker salaries)					
	Insert Row					
	SALARIES AND WAGES SUBTOTAL					
2	FRINGE BENEFITS					
	Insert Row					
	FRINGE BENEFITS SUBTOTAL					
3	CONTRACTED SERVICES (LIST BY TYPE)					
	Insert Row					
	CONTRACTED SERVICES SUBTOTAL					
4	SUPPLIES AND MATERIALS					
	Insert Row					
	SUPPLIES AND MATERIALS SUBTOTAL					
5	COMMUNICATIONS					
	Insert Row					
	COMMUNICATIONS SUBTOTAL					
6	TRAVEL					
	Insert Row					
	TRAVEL SUBTOTAL					
7	RENT AND UTILITIES					
	Insert Row					
	RENT AND UTILITIES SUBTOTAL					
8	EQUIPMENT					
	Insert Row					
	EQUIPMENT SUBTOTAL					
9	MISCELLANEOUS					
	Insert Row					
	MISCELLANEOUS SUBTOTAL					
<b>ALL CATEGORIES SUBTOTAL</b>						

2012 Application		BUDGET SUMMARY FORM				
EXPENSE CATEGORY		UCFRB RESTORATION FUND	MATCHING FUNDS			TOTAL
			Cash	In-Kind	Subtotal	
1	SALARIES AND WAGES					
2	FRINGE BENEFITS					
3	CONTRACTED SERVICES					
4	SUPPLIES AND MATERIALS					
5	COMMUNICATIONS					
6	TRAVEL					
7	RENT AND UTILITIES					
8	EQUIPMENT					
9	MISCELLANEOUS					
TOTAL						

In electronic form this spreadsheet will automatically calculate the expense totals from the Budget Detail Form.



## **SUPPLEMENTAL GUIDANCE**



## ATTACHMENT A

### DEFINITIONS

The short definitions that follow are intended to help applicants identify the types of projects that will restore, rehabilitate, replace, and/or acquire the equivalent of injured natural resources and/or lost services.

**Natural Resources:** “Natural resources” that may be addressed through UCFRB Restoration Fund projects include the land, fish, wildlife, biota, air, surface water, ground water, and other resources that: 1) are owned by or held in trust, managed or controlled by the State of Montana; 2) have been injured from exposure to or contact with hazardous substances generated by mining and mineral processing in the UCFRB conducted by ARCO and its predecessor, the Anaconda Company; and 3) were the subject of the Montana v. ARCO lawsuit. A description of the aquatic and terrestrial injured natural resources is provided in the Attachment B “Fact Sheet on Aquatic and Terrestrial Injuries in the UCFRB.”

**Services:** “Services” are the physical and biological functions, including the human use of those functions, performed by the natural resource, or that would have been performed by the natural resource had it not been injured by the release of hazardous substances. A service provided by an injured natural resource, or that would have been provided absent the injury to the natural resource, may also be addressed through UCFRB Restoration Fund projects. Services include ecological services such as flood control and erosion control, habitat, and food chains, as well as human services such as recreation and drinking water consumption.

**Injury:** “Injury” to a natural resource is the measurable adverse change in the chemical, physical, or biological quality or the viability of a natural resource resulting from exposure to a release of a hazardous substance.

**Baseline:** “Baseline” refers to the condition of a natural resource and the services it provided that would have existed had the discharge of the hazardous substance not occurred.

**No Action-Natural Recovery Period:** “No Action-Natural Recovery Period” refers to the time needed for recovery of an injured resource to baseline conditions if no restoration efforts are undertaken beyond response actions. This time period depends on many factors, including the extent of the injury, the persistence in the environment of the hazardous substance to which the natural resource is exposed, and the extent of response actions or other human intervention.

**Response Actions:** “Response actions” are those measures undertaken by the U.S. Environmental Protection Agency or the State of Montana at contaminated sites that are deemed necessary to protect the public health or welfare or the environment from continued or further harm. Although response actions are not primarily designed to restore injured natural resources or services, they may have this effect to some extent. They may reduce or entirely eliminate the length of time for natural recovery of an injured natural resource.

**Restoration:** The term “restoration” is used in both a general sense and specific sense in this document. Used in a general sense, “restoration” generally refers to the four types of actions

authorized under federal law to address injuries to natural resources (i.e., restoration, rehabilitation, replacement, and acquisition of the equivalent natural resources). Used in the specific sense, “restoration” refers to actions that operate directly on the injured resources and services to return them to baseline conditions or to accelerate the recovery process. For example, in a situation where numerous sources are contaminating groundwater, removing the most significant sources would lessen the injury and result in the groundwater’s recovery, or “restoration,” to baseline sooner than would otherwise occur.

**Rehabilitation:** Actions constituting “rehabilitation” attempt to return the injured resources and services to a state different than their baseline condition, but still beneficial to the environment and the public. For example, where injury to a conifer forest resulted in a loss of upland big game habitat, planting grasses and shrubs would create upland bird habitat while only beginning the process of restoring upland big game habitat.

**Replacement:** Actions constituting “replacement” seek to create or enhance resources and services equivalent or very similar to those that have been injured, but away from the immediate site of the injury. For example, where an injury to a trout fishery has occurred, improvements to a nearby stream would enhance its trout fishery and would, in effect, constitute “replacement” of the injured fishery.

**Acquisition of Equivalent Resources:** Actions constituting “acquisition of equivalent resources” involve acquiring unimpaired resources comparable to those that are injured. Acquisition of equivalent resources can hasten recovery or protect the injured natural resources. For example, acquiring healthy land adjacent to injured land can relieve pressure on the injured land and hasten its recovery. Or acquisition of equivalent resources may compensate the public for its diminished ability to use the injured resources. For example, although acquiring unimpaired land for public use does not restore the land that has been injured, it does make other land available for public use.

## ATTACHMENT B

### FACT SHEET ON AQUATIC AND TERRESTRIAL INJURIES IN THE UCFRB Status as of 1995<sup>3</sup>

#### **AQUATIC RESOURCE INJURIES**

***Surface Water Resources:*** Surface water concentrations of copper and zinc exceed aquatic life criteria virtually all of the time in Silver Bow Creek and periodically along the 120 miles of the Clark Fork River.

***Sediments:*** Sediments are highly contaminated along Silver Bow Creek and the Clark Fork River. Bed sediments contain copper concentrations that exceed baseline conditions by, on average, factors of 25 on the Clark Fork River and a factor of 500 on Silver Bow Creek.

***Aquatic Insects:*** Aquatic insects contain elevated concentrations of metals in both Silver Bow Creek and Clark Fork River. Particular species have been reduced in quality, or in Silver Bow Creek, eliminated.

***Fish:*** Trout populations are absent from Silver Bow Creek. The Creek should contain about 190 trout/mile according to the 1994 survey. In the Clark Fork River, trout populations are about one-fifth of the populations found in reference streams. The River has lost about 1100 fish/mile. The average trout population in the 1994 survey was only 250/mile on the Clark Fork River whereas baseline is 1350/mile.

***Services:*** The services lost or impaired by aquatic injuries include lost fishing and many other recreation opportunities that accompany fishing such as boating, hiking, camping, and observing wildlife.

#### **TERRESTRIAL RESOURCE INJURIES**

***Aquatic Terrestrial Injuries:*** 750 acres of floodplain along Silver Bow Creek and 215 acres along the Clark Fork River (Warm Springs Ponds – Deer Lodge) contain tailings, which have eliminated riparian wildlife habitat. Approximately two thirds of the tailings along Silver Bow Creek have been removed and placed on the Opportunity Ponds. There are additional acres of floodplain on Silver Bow Creek and Clark Fork River which contain metals enriched soils that are a source of metals to surface water and are phytotoxic to vegetation. Baseline vegetation contains a mixture of riparian forest/shrub communities and agricultural land uses.

Populations of otter, mink and raccoons have been eliminated from Silver Bow Creek and severely reduced in the Clark Fork River. Baseline reference sites on the Big Hole River have significantly more signs of otter, mink and raccoon. Populations of other types of wildlife have also been significantly reduced along Silver Bow Creek and the Clark Fork River.

***Opportunity Ponds:*** Riparian resources (soils, vegetation, wildlife and wildlife habitat) have been lost on the 3400-acre ponds.

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<sup>3</sup> Note: This fact sheet summarizes the injured natural resources and lost services that were covered under the Montana v. ARCO natural resource damage litigation. These natural resource injuries were assessed between 1991 and 1995 and summarized in *the State's 1995 Restoration Determination Plan* issued by the NRDP in October 1995. Thus the information herein is reflective of conditions existing at that time and not current conditions.

***Upland Terrestrial Injury:*** Approximately 17.8 square miles (11,366 acres) of upland soils, vegetation, wildlife habitat, and wildlife have been injured. These phytotoxic soils are lacking major indigenous plant associations. These areas are Mount Haggin (6.7 square miles); Smelter Hill (7.2 square miles); and Stucky Ridge (3.8 square miles). As a result, wildlife populations in these areas have been significantly reduced. Baseline areas have vegetative cover consisting of approximately 70% forest and 30% grassland for the Mt. Haggin and Smelter Hill areas. The Stucky Ridge area was mostly grassland.

***Services:*** The services lost or impaired due to injuries to vegetation, wildlife and wildlife habitat include hunting, bird watching, hiking, observing wildlife and general recreation.