



MEMORANDUM

TO: UCFRB Advisory Council Members, Public

FROM: NRDP

DATE: July 23, 2019

SUBJECT: Proposed Amendment to Butte Silver Bow (BSB) Groundwater Restoration Plan, and Allocation of Funds to NRDP Parrot Tailings Removal Fund.

1. Purpose and Background

By this memorandum the Governor, as the Trustee of the State's natural resources, proposes to allocate all of the unallocated, accrued interest on the UCFRB Restoration Fund allocated to Butte Groundwater and reallocate certain unspent funds, to transfer a total of \$4.7 million to the NRDP Parrot Tailings Removal Fund for purposes of implementing the Butte Area One Restoration Plan Amendment – Parrot Tailings Waste Removal, approved by the Trustee in December 2016.

This Groundwater Amendment is necessary in order to continue with and complete the Parrot Tailings Waste Removal Project (Parrot Project). It is proposed in view of the Environmental Protection Agency's April 2019 Proposed Plan, and the Remedial Elements Scope of Work that was released as "Draft Final for public distribution" on EPA's website in 2018. If the actions identified in those documents are changed in any material respect in/by the final BPSOU Consent Decree (if one is concluded), further amendment(s) to the BAO Restoration Plan (and other plans) may be necessary.

This action is proceeding concurrently with proposed amendments to the Butte Area One (BAO) Restoration Plan (2012) (as amended by the 2016 Parrot Tailings Removal Amendment), and to the allocation of certain of the reserves of the Upper Clark Fork River Basin (UCFRB) Aquatic and Terrestrial Resources Restoration Plans. Together, these actions will allow for the transfer of up to a total of \$18.5 million to the NRDP Parrot Tailings Removal Fund to allow for the completion of the Parrot Project.

Pursuant to these concurrent proposed actions, the funds transferred from the above-referenced funds to the NRDP Parrot Tailings Removal Fund would be expended in the following sequence: (a) all of the existing (as of July 23, 2019) funds in the NRDP Parrot Tailings Removal Fund will first be expended; then (b) concurrently, 26% of any future Parrot Project costs from the UCFRB Restoration Fund/Butte Groundwater Restoration; 31% of any future Parrot Project costs from the BAO Restoration Fund; and 43% of any future Parrot Project costs from the UCFRB Restoration Plan Reserves. These percentages are based on the contribution from each fund of the total \$18.5 million being proposed at this time through the three amendments.

It is anticipated that some of the funds transferred to the NRDP Parrot Tailings Removal Fund from the UCFRB Restoration Fund/Butte Groundwater Restoration under this Groundwater Amendment could be reimbursed from proceeds of a future settlement between the State of Montana and Atlantic Richfield, if such a settlement is finalized through a BPSOU consent decree, and pursuant to that consent decree, the funds are not required for Montana Department of Environmental Quality to complete the Blacktail Creek and Confluence portions of the BPSOU remedy. The funds would be reimbursed from such a future settlement in the same proportions as the funds are expended. That is, 26% of any future settlement would reimburse the UCFRB Restoration Fund/Butte Groundwater Restoration; 31% from any future settlement would reimburse the BAO Restoration Fund; and 43% of any future settlement would reimburse the UCFRB Restoration Plan Reserves.

Under the federal Superfund law, natural resource damage (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.¹ 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.² The Butte Area One Restoration Plan (January 2013) (BAO Plan) and the Butte Area One Restoration Plan Amendment – Parrot Tailings Waste Removal (December 2016), approved by the Governor December 2016, meet the above requirements.

The Parrot Project will help the State meet the goals of the Upper Clark Fork River Basin Aquatic and Terrestrial Resources Restoration Plans, the BAO Restoration Plan, and the Butte Silver-Bow Groundwater Restoration Plan.

2. Review and Approval Processes, and Public Participation

This Groundwater Amendment, along with concurrent proposed actions referenced above, will be presented by NRDP at a joint meeting of the UCFRB AC and the BNRC to be held on August 5, 2019 at 1:00 p.m. at the Butte Archives.

The UCFRB AC's consideration and comment concerning this proposed Groundwater Amendment will be considered along with public input; there will not be a separate meeting for the UCFRB AC to consider the proposed revision. Public comment on the Groundwater Amendment can be submitted in writing during a public comment period scheduled for July 23, 2019 through August 22, 2019. Written comments may be submitted to NRDP at nrdp@mt.gov, or my mail (postmarked on or before August 22, 2019) to: NRDP, 1720 9th Avenue, Helena, MT 59620-1425.

Following consideration of public comment, the Trustee will make the final decision on this Groundwater Amendment.

¹ 42 U.S.C. §9607 and §9611

² 43 CFR §11.82

3. Proposed Amendment to the Butte Groundwater Restoration Plan – Allocation of \$4.7 million to the Parrot Tailings Waste Removal Project

By this Groundwater Amendment the Trustee allocates all of the remaining, unallocated, accrued interest on the UCFRB Restoration Fund allocated to Butte Groundwater and reallocates certain unspent funds to direct the transfer of \$4.7 million to the NRDP Parrot Tailings Removal Fund for purposes of implementing the Butte Area One Restoration Plan Amendment – Parrot Tailings Waste Removal, approved by the Trustee in December 2016.

The funds transferred to the NRDP Parrot Tailings Removal Fund under this Groundwater Amendment would be expended in the following sequence: (a) all of the existing (as of July 23, 2019) funds in the NRDP Parrot Tailings Removal Fund will first be expended; then (b) concurrently, 26% of any future Parrot Project costs from the UCFRB Restoration Fund/Butte Groundwater Restoration; 31% of any future Parrot Project costs from the BAO Restoration Fund; and 43% of any future Parrot Project costs from the UCFRB Restoration Plan Reserves. These percentages are based on the contribution from each fund of the total \$18.5 million being proposed at this time through the three amendments.

Parrot Tailings Waste Removal Project Funding Structure

This figure shows the restoration plan amendments needed to produce the funding for completing the Parrot Tailings Waste Removal Project, including the BSB Shops.
(All numbers approximate and rounded)

