2011 Final
Upper Clark Fork River Basin
Long Range Priorities and Fund Allocation Guidance Plan

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

- 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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1 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 Remainders (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
### 1st Quarter FY12 UCFRB Restoration Fund Summary
#### As of 10/1/11

<table>
<thead>
<tr>
<th></th>
<th>Book Value</th>
<th>Market Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>A FYE11 Fund Balance</td>
<td>$138,019,768.44</td>
<td>$147,404,341.41</td>
</tr>
<tr>
<td>B FY12 Interest</td>
<td>$1,373,587.06</td>
<td>$1,373,587.06</td>
</tr>
<tr>
<td>C FY12 Expenses</td>
<td>($1,018,224.00)</td>
<td>($1,018,224.00)</td>
</tr>
<tr>
<td>D FY12 Market Adj ustment</td>
<td>Not Applicable</td>
<td>Done at Fiscal Year End</td>
</tr>
<tr>
<td>E Fund Balance (A+B-C)</td>
<td>$138,375,131.50</td>
<td>$147,759,704.47</td>
</tr>
</tbody>
</table>

### Additional Fiscal Projections Based on Assumptions

<table>
<thead>
<tr>
<th>Major Encumbered Funds(^1) Approved but not spent as of 10/1/11</th>
<th>Total</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grant Projects</td>
<td>($26,948,009.45)</td>
<td>($26,948,009.45)</td>
</tr>
<tr>
<td>Dutchman</td>
<td>($2,421,766.29)</td>
<td>($2,421,766.29)</td>
</tr>
<tr>
<td>Milltown</td>
<td>($1,904,341.76)</td>
<td>($1,904,341.76)</td>
</tr>
<tr>
<td>Estimated Fund Balance minus major encumbered funds (E-F)</td>
<td>$107,101,014.00</td>
<td>$116,485,586.97</td>
</tr>
</tbody>
</table>

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\(^1\) 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.
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 to reflect the Governor's approval of the Long Range Guidance Plan in December 2011:

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

<table>
<thead>
<tr>
<th>Groundwater</th>
<th>Terrestrial</th>
</tr>
</thead>
<tbody>
<tr>
<td>SBC Greenway</td>
<td>Total $14,138,954</td>
</tr>
<tr>
<td>Running Percent</td>
<td>37.6%</td>
</tr>
</tbody>
</table>

Other Projects Subtotal: $49,766,812

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

<table>
<thead>
<tr>
<th>Groundwater</th>
<th>Aquatic</th>
<th>Terrestrial</th>
</tr>
</thead>
<tbody>
<tr>
<td>SBC Greenway (60% of $8 Million)</td>
<td>$4,669,477</td>
<td>$4,669,477</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$4,669,477</td>
<td>$4,669,477</td>
</tr>
</tbody>
</table>

D. Summary of Educational/Database Projects

(These are included in tables above)

<table>
<thead>
<tr>
<th>Groundwater</th>
<th>Aquatic</th>
<th>Terrestrial</th>
</tr>
</thead>
<tbody>
<tr>
<td>SBC Greenway (40% of $5 Million)</td>
<td>$3,668,548</td>
<td>$3,668,548</td>
</tr>
<tr>
<td>Subtotal</td>
<td>$3,668,548</td>
<td>$3,668,548</td>
</tr>
</tbody>
</table>

E. Summary of Educational/Database Projects

(These are included in tables above)

<table>
<thead>
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</tr>
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<tbody>
<tr>
<td>SBC Greenway Total</td>
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<td>$14,138,954</td>
</tr>
<tr>
<td>Percent of Total</td>
<td>37.6%</td>
<td>37.6%</td>
</tr>
</tbody>
</table>

F. Summary of Recreational Projects

(These are included in tables above)

<table>
<thead>
<tr>
<th>Groundwater</th>
<th>Aquatic</th>
<th>Terrestrial</th>
</tr>
</thead>
<tbody>
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</tr>
<tr>
<td>Percent of Total</td>
<td>37.6%</td>
<td>37.6%</td>
</tr>
</tbody>
</table>
1999 CD
$129.8m in damages
- $119.8m to UCFRB RF
  - $3.2m earmarked to Dutchman
- $10m to SBC Reserve Fund
  - Transfer to CFR Reserve Fund in 2008
- Fund Balance as of 10/1/11: $138.4m; $147.8m Market
- Leftover SBC Remediation Funds (TBD)*

2005 Milltown CD
$7.6m earmarked from UCFRB RF (1999CD) to Milltown
- Expended
$3.9m from Northwestern Energy earmarked to Milltown
- 10/1/11 Fund Balance: $35,000
- Additional $2 million allocated in 6/2011
  - $1.9m remaining as of 10/1/11

2008 CFR CD
$68.0m in damages
- $28.1m earmarked to BAO
  - 10/1/11 Fund Balance: $32.0m
- $26.7m earmarked to CFR
  - 10/1/11 Fund Balance: $31.1m
- $13.2m earmarked to Uplands
  - 10/1/11 Fund Balance: $12.4m
$12.5m CFR Reserve Fund (Transfer from SBC Reserve Fund) in 2008; [Leftovers to UCFRB RF]
- 10/1/11 Fund Balance: $15.0m
Leftover CFR Remediation → CFR RF

Encumbered UCFRB RFs
Approved For Projects But Not Spent
(Does not include the budget for program administration, including CFWEP)
- $2.4m DOI wetlands (1999 CD)
- $27.0m Approved Grants
- $1.9m Milltown (2005 CD)
Total Encumbered as of 10/01/11 - $31.3m
  + $8.0m Silver Bow Creek as of 12/19/11
Total Encumbered as of 12/19/11 - $39.3m

Unencumbered UCFRB RFs
As of 10/1/11
$147.8m Fund Balance (Market)
  - 31.3m approved encumbrances as of 10/1/11
$116.5m unencumbered
  - 8.0m approved Silver Bow Creek as of 12/19/11
$108.5m unencumbered

SBC Remediation Reserve
~ $35 m (2013)*
"at and above Deer Lodge"

SBC GWSD Loan Repayment

Priority GW 36%
Butte 75%
Anaconda 25%

Priority Aquatic 39%

Priority Terrestrial Reserve 15%

Aquatic & Terrestrial Reserve 15%
Aquatic & Terrestrial 85%

*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.