

**Response to Public Comments on
Final Restoration Plan Amendments for Funding the
Parrot Tailings Waste Removal Project**

Prepared by:



Montana Department of Justice
Natural Resource Damage Program (NRDP)
1720 9th Avenue
PO Box 201425
Butte, MT 59620-1425

September 17, 2019

**Response to Public Comments on
August 2019 Final Restoration Plan Amendments
Parrot Tailings Waste Removal Project**

Table of Contents

Section I. Introduction	1
Section II. Comment Summary and Response by Category	2
Category A: Parrot Project/Alternative Analyses	2
Category B: Parrot Project is Remedy not Restoration	5
Category C: Consider Other Sources of Funding for Allocations Proposed in Amendments	7
Category D: Public Process used for Amendments	11
Category E: Comments on Timing of Amendments	12
Category F: Oppose the Parrot Project	13
Category G: Other/Miscellaneous Comments	14
Attachment A: Public Comments	A1
List of Comments	A1
Public Comment Letters	A3
Attachment B: Funding by County	B1
Attachment C: Reimbursement Table	C1

Section I. Introduction

On July 23, 2019, the State of Montana Department of Justice Natural Resource Damage Program (NRDP), released draft amendments to three Restoration Plans for public comment, which ended on August 22, 2019. The three proposed Restoration Plans for amendment are:

- (1) Upper Clark Fork River Basin Aquatic and Terrestrial Resources Restoration Plans;
- (2) the Butte Groundwater Restoration Plan; and
- (3) the Butte Area One Restoration Plan.

The draft amendments for these plans proposed funding allocations to assist with the implementation of the Butte Area One Restoration Plan Amendment – Parrot Tailings Waste Removal Project (Parrot Project), approved in December 2016. The term “Parrot Tailings” in this document refers to all wastes associated with the Parrot Project, including contaminated soils, slag, tailings, and other wastes.

For outreach on this public comment period, the NRDP sent notices of this opportunity for public comment to 531 individuals/entities on its mailing list, issued a press release, placed two sets of display ads in the Butte area newspaper, and conducted an informational Butte Natural Resource Damage Council (BNRC) and the Upper Clark Fork River Basin (UCFRB) Advisory Council (AC) meeting on August 5, 2019.

The NRDP received a total of thirty-three (33) comment letters during the public comment period. Council members also requested the transcripts from the joint council meeting be accepted as public comment (the August 5 meeting minutes were recorded by a court reporter). See Attachment A for a list of commenters, identified by a specific number that serves as a reference to the comment throughout this document. Attachment A also provides copies of the comment letters and meeting transcripts from the public meeting, which are also available on the NRDP website at: <https://dojmt.gov/lands/notices-of-public-comment/>.

This document summarizes the comments received, with similar comments grouped together by category, and provides the responses organized by these categories. Some comment letters included information that is addressed in multiple categories. Comments received at the August 5, 2019, meeting are noted with a “T” prefix for the purposes of this document.

Section II. Comment Summary and Response by Category

Category A: Parrot Project/Alternative Analyses.

Summary: Commenters generally agree the Parrot wastes should be addressed to protect the creeks. But many of the commenters also want the Trustee to consider other less costly alternatives, including groundwater control.

Comment 1: One commenter (T-a) asked if the Parrot Tailings are the critical source of contamination for all the downstream watercourses?

Response: As previously presented at BNRC and AC meetings, and in other public documents, the State believes the primary sources of contamination to Blacktail and Silver Bow Creeks (“creeks”) are (1) stormwater coming off the Butte Hill and (2) contamination along the creeks (bed, banks, and floodplain). The primary wastes along those creeks within BPSOU are located at the Butte Reduction Works Smelter Site, and Blacktail Creek and the Confluence Area.

Contaminated groundwater currently discharging to the creeks is a secondary source of contamination. The Parrot Project wastes are the main source of contamination to the groundwater. The Governor, as the natural resource trustee, prioritized the Parrot Project because it was the highest priority contaminant source to the creeks that was not being addressed under the proposed BPSOU remedy. Restoration funds can be used for the “residual” of remedy, and the current EPA remedy does not require the removal of the Parrot Tailings. At several sites within the UCFRB, the State has used restoration funds to implement actions it believed should have been addressed by remedial action, including excavating approximately 350,000 cubic yards of Ramsey Flats tailings within the Streamside Tailings Operable Unit (SSTOU), tailings within the Clark Fork River Operable Unit (CFROU), and more than 500,000 cubic yards of sediments at the Milltown Reservoir Sediments Operable Unit (Milltown OU). In all these examples, the selected remedial actions were to treat the tailings in place; however, to help restore the natural resources, the State used restoration funds to implement restoration actions that removed additional tailings.

The groundwater, surface water, and instream sediment data clearly show there are ongoing impacts to surface water and instream sediments from contaminated groundwater discharge to the creeks. Exceedances of aquatic life standards for surface water occur, and instream sediments contaminant concentrations are extremely elevated above various benchmarks for risks to stream environments, exceeding EPA sediment screening benchmarks by up to 3 orders of magnitude.

Comment 2: Five commenters (1a, 1d, 13c, 15a, 19e) commented on the need to consider other (less costly) alternatives to tailings removal, including groundwater capture/treatment.

Response: In general, the State believes waste removal is the best option when addressing mine waste impacts to surface waters. This is what the State performed for the Silver Bow Creeks Streamside Tailings Operable Unit, at the Milltown Reservoir OU, and is currently implementing on the Clark Fork River Operable Unit. With that said, the Parrot Project is one mile upgradient from the creeks and the pathway of contamination to the creeks is the resulting contaminated groundwater, so an appropriate groundwater capture system for Phase II could be implemented at a lower cost than demolition of the Butte-Silver Bow Shops and excavation of contaminated

wastes underneath the Butte-Silver Bow shops. However, relying on a groundwater capture system does entail more uncertainty to effectiveness than excavation, and would require operation and maintenance as long as the system remained in place. The Governor has determined the Parrot Project is a high priority project worth doing because of its significant benefits and that removal of wastes offers a more durable and permanent solution than relying on an ongoing approach that may not have adequate long-term funding

Comment 3: Four commenters (1b, 13c, 15a,) commented the need to consider alternatives to tailings disposal within the MR mine-permitted area due to dust and aerial transport concerns.

Response: Montana Resources (MR) is responsible under its operating permit to control all dust from its operating mine, and all wastes from the Parrot Project placed on the MR site are covered by MR's operating permit. MR's facility is the only disposal location that does not require transporting waste over public roads. Transporting over 400,000 cubic yards (cy) of wastes to another disposal location over public roads would require nearly 29,000 round-trip truck hauls using 14-cy haul trucks. The risk for accidents involving injury or death associated with this many waste haul truck trips was deemed unacceptable by NRDP and the Governor.

Comment 4: Thirteen commenters (2a,7a, 8a, 10a, 12a, 14a, 22a, 24b, 28a, 30a, 31b, T-q, T-ee) agreed the removal of the Parrot Tailings is necessary to protect groundwater and the creeks and should be done as soon as possible.

Response: We acknowledge the comment.

Comment 5: Two commenters (2b and 3b) commented the proposed funding along with the allocated funds probably will not be enough to complete the Parrot Project. Actual cost could be \$60-\$70 million.

Response: The NRDP believes it has reliable and accurate estimates for the design and waste removal costs for both phases of the Parrot Project at \$21.8M. Even though NRDP removed twice as much waste as anticipated in Phase 1, the project still ended below budget. Butte Silver Bow (BSB) believes it has a good estimate for relocation of the shops at \$14.2M (inclusive of all costs). If site conditions and or costs dramatically change, the State will reevaluate its cleanup plan.

Comment 6: One commenter (T-2) asked why is DEQ not doing the Phase 2 Parrot Project as part of remedy?

Response: DEQ is not the lead agency under CERCLA at the Butte Priority Soils Operable Unit; EPA is the lead agency and is the agency that must require BP-AR and the other responsible parties to implement the CERCLA remedy. NRDP implements restoration for the State of Montana. See Comment # 1.

Comment 7: One commenter (15b) commented the risk from the Parrot groundwater plume has been generally overstated. Currently, groundwater from the Butte Reduction Works is having the greatest impact on water quality in Silver Bow Creek. EPA's Proposed Plan addresses that source of contamination, but also recognizes and addresses the minor impact groundwater contamination from the MSD corridor is having on Blacktail Creek. There is little outside of

what is currently proposed by EPA that will significantly reduce copper concentrations in Silver Bow Creek in the foreseeable future.

Response: The State agrees the Butte Reduction Works Smelter site groundwater is having the most significant effect on Silver Bow Creek surface water quality and instream sediment quality. EPA and BP-AR are to address those wastes and that groundwater pathway to the creeks through the proposed remedy for BPSOU. They have also said they would address the contaminated alluvial groundwater discharging to Blacktail Creek. These actions, if performed properly, should reduce contaminant concentrations to the creeks, but they are engineered solutions that will not last forever. The Parrot Tailings are the greatest source of contamination to groundwater, and contaminated groundwater is discharging to the creeks. The only permanent solution for wastes left in place is removal of the waste source. The State does not believe relying on engineered solutions to these types of cleanup issues is the best approach for problems that may persist for 100s of years into the future.

Comment 8: One commenter (23b) commented there is barely enough money for the Parrot Tailings removal, what happens if caps fail, or another contaminated area is discovered?

Response: The cost of maintenance of the caps associated with the Parrot Project (i.e., the evapotranspiration cover systems) is incorporated within the total project costs. If other contaminated areas or cap failures occur, those projects would be the responsibility of EPA to address as part of remedy. The State of Montana is not responsible for the Superfund cleanup in BPSOU or Butte. Waste sources and the effectiveness of the remedy components are a responsibility of the responsible parties, including BP-AR.

Comment 9: One commenter (T-n) commented there is an extensive monitoring network, but it looks like only two years of monitoring is covered. How are we funding the rest of the monitoring so we know the project is successful? Another commenter (9) stated NRDP needs to do additional investigation of the entire groundwater system, including the bedrock and alluvial aquifers.

Response: NRDP has developed an extensive groundwater monitoring network that includes approximately 28 new monitoring wells, along with 50 existing monitoring wells, critically located in areas where BP-AR or EPA have not monitored groundwater quality and elevation. The State has had discussions with BP-AR to combine its monitoring effort with the State's (Parrot Performance Monitoring Plan, 2017). If successful, this could dramatically reduce or eliminate this ongoing cost. The alluvial and bedrock aquifer systems are distinct and separate. The bedrock aquifer discharges to the Berkeley Pit. The alluvial aquifer discharges to the creeks and NRDP does agree the alluvial aquifer flow patterns are complicated, which is one of the reasons the State believes removal of contaminated materials is a better long-term solution.

Comment 10: One commenter (T-o) asked about the Parrot water concentrations, are they shown as average or maximum?

Response: Depending on the table, slide or presentation, they can be average or maximum; whether the concentrations are average or maximum should be referenced on every document.

Comment 11: One commenter (T-p) asked where is the restoration after the Parrot Project is complete, how do we get a street, who is doing the landscaping, how do we get a stream there?

Response: The State has an agreement with the Parrot Project landowner, BSB, as to access and end land conditions. BSB determines the end land use, using its standard public processes. As part of the agreement, NRDP will replace and improve Civic Center road and all the utilities that currently exist. The cleanup of the Parrot Site would allow multiple end land uses, including a creek, because the Parrot Tailings have been removed.

Comment 12: One commenter (T-v) asked why is Phase 2 so much more than Phase 1?

Response: There are three primary reasons. There are approximately 50% more materials (waste and overburden) to move, much of the waste is saturated in groundwater and therefore more expensive to dig out and manage, and most importantly, Phase 2 costs also include the \$14.2M to relocate the BSB shops.

Comment 13: One commenter (11a) commented NRDP was instructed to proceed with the Parrot Project without the funding being first secured.

Response: In 2016, the Governor determined the Parrot Project was a top priority for the State, and, at that time, the State had allocated more than enough money to complete Phase 1 of the Parrot Project. Phase 1 of the Parrot Project cost-effectively removed a significant source of contamination to the groundwater and allowed NRDP to capture and remove groundwater that is more contaminated than the Berkeley Pit water. Accordingly, Phase 1 was an important restoration project that made legal and financial sense, regardless of whether the State proceeded with Phase 2. The State will not and legally cannot proceed with Phase 2 (including relocating the BSB Shops) until a specific funding source is secured, which is the purpose of the three proposed amendments.

Category B: Parrot Project is Remedy not Restoration.

Summary: **Many Commenters stated the State should not be using restoration funds for remediation activities without a guarantee of reimbursement from BP-AR. The Governor should not sign a BPSOU Consent Decree (CD) without BP-AR paying for cleanup of Parrot and the complete Silver Bow Creek (SBC) corridor in BPSOU. The State should stand up and fight to get the remedy needed.**

Comment 14: Seven commenters (T-b, 7b, 7d, 8d, 10b, 30b, T-l) commented the BNRC has had longstanding concerns about allocating any restoration dollars to do remedy; now you're asking for over half of the BAO fund to go to remedy, which means \$15.8 million will not be available for restoration.

Response: Comment is acknowledged. Please see Comments # 1 and 20.

Comment 15: One commenter (T-u) stated "the reason we are here today is EPA, BP-AR, and I believe BSB, agreed to a remedial action, a failed remedial action. The State did testing and

found aqua colored water, so now the onus is put on our backs (restoration). The 800-pound gorilla, EPA and BP-AR, are not in the room.”

Response: Comment acknowledged.

Comment 16: One commenter (T-ii) commented “remedy is not done, we do not know what it will look like when remedy is done, we don't have any restoration dollars to do any restoration in the basin after the remedy is done. That is the concern you hear from the BNRC today.”

Response: Comment acknowledged. See response to Comment # 23.

Comment 17: 27 commenters (1c, 2d, 2g, 3a, 11a, 11b, 12b, 14b, 16a, 17b, 18a, 19a, 22a, 23a, 24b, 25a, 27a, 26b, 27b, 31a, T-I, T-k, T-m, T-s, T-w, T-ff, T-gg) expressed concerns the Parrot Project is remediation not restoration. Several of the comments are paraphrased here: The State should not be using restoration funds for remediation activities that BP-AR should be paying for without a guarantee of reimbursement. The Governor should not sign a CD without BP-AR paying for cleanup of the Parrot and complete SBC corridor. The State is responsible for remedy and restoration of Silver Bow Creek from Texas Avenue to West of Harrison Avenue at Casey Street. The State should stand up and fight to get the remedy needed.

Response: The State agrees the Parrot Tailings should be addressed under remedy and has maintained this position since at least 2006. Unfortunately (from the State’s perspective) EPA has not agreed, and there has been an impasse on this issue since at least 2006. In determining to proceed with the Parrot Project, the Governor concluded this impasse was an obstacle to getting the cleanup done in Butte, and that it was unlikely the State’s efforts to persuade EPA to change its position on this question would be successful. The Governor concluded the State’s action to remove the Parrot Tailings would avoid this impasse and facilitate the BPSOU negotiations moving forward more quickly. He also felt Butte deserves action and finality. In so doing, the Governor made clear he expected the other BPSOU parties to also do their part in ensuring a good cleanup for Butte. Restoration can be used for the “residual” of remedy, and the current EPA remedy does not address the Parrot Tailings. Restoration funds can be used for the “residual” of remedy, and the current EPA remedy does not address the Parrot Tailings. At several sites within the UCFRB, the State has used restoration funds to implement actions it believed should have been addressed by remedial action, including excavating approximately 350,000 cubic yards of Ramsey Flats tailings within the SSTOU, tailings within the CFROU, and more than 500,000 cubic yards of sediments at the Milltown OU. In all these examples, the selected remedial actions were to treat the tailings in place; however, to help restore the natural resources, the State used restoration funds to implement restoration actions that removed additional tailings.

The State agrees the CD should include a meaningful financial contribution from BP-AR that can be used for the Parrot Tailings. The State does not anticipate the CD, if finalized, will reimburse the totality of the funds affected by these amendments. However, the Governor has determined it is appropriate to move forward with the Parrot Project; even without a CD, complete or even any (if no CD) funding from BP-AR. Also, the State is not responsible for remedy and restoration of Silver Bow Creek from Texas Avenue to West of Harrison Avenue at Casey Street. EPA and BP-AR remain responsible for remedy.

Comment 18: One commenter (26a) commented decisions made a decade ago to not require BP-AR to remove the Parrot under Remedy must be revisited in light of new data and information.

Response: New data and information collected by NRDP has served to reinforce the need for the Parrot Project. See also response to Comment # 17.

Comment 19: One commenter (2g) commented if BP-AR doesn't reimburse the State for the Parrot Project then EPA/Federal Government should.

Response: There is not a source of funding or mechanism for EPA or the federal government to reimburse the State for the Parrot Project.

Category C: Consider Other Sources of Funding for Allocations Proposed in Amendments.

Summary: Commenters provided comments suggesting consideration of where the funding should come from to fully fund the Parrot Project. These comments were combined into fourteen different comments and are provided below.

Comment 20: Two commenters (2c, 2f) asked what is the status of the restoration projects that would otherwise be funded with the funding proposed for the Parrot Project? If these projects are finished, then reallocation seems reasonable, if they are not finished, could the funding be borrowed?

Response: NRDP proposed to allocate funds to the Parrot Project from the BSB Groundwater, UCFRB Restoration Fund Aquatic and Terrestrial SSTOU Excess allocations, and BAO that have not been allocated for specific projects. The revised BSB Groundwater Amendment consist of \$4.4 million in unallocated interest earnings and \$800,000 from unspent funds, which could include the water metering program. The water meter funds are not designated to specific locations at this time but are intended to be used as residences requests meters. Potential reimbursement in the event there are future settlement proceeds available for such purpose would include the BSB Groundwater receiving 14% of the available settlement funds.

Funds proposed from the UCFRB Restoration Fund are the \$8.0 million that were placed in the Aquatic and Terrestrial reserves in 2016 to be allocated upon revision of the UCFRB Aquatic and Terrestrial Resources Restoration Plans. These funds were from the SSTOU Remediation Excess and transferred to the UCFRB Restoration Fund in 2016 as reimbursement for the Greenway allocation in 2016. Potential reimbursement in the event there are future settlement proceeds available for such purpose would include the UCFRB Restoration Fund SSTOU Excess receiving 51% of the available settlement funds. In addition, \$2.5 million of the \$5 million proposed to be transferred from the SSTOU Remediation Fund to the UCFRB Restoration Fund is being allocated to aquatic and terrestrial restoration planning and project implementation in the Warm Springs Ponds area for the NRDP to develop restoration actions to be implemented in conjunction with the Warm Springs Ponds OU Records of Decision.

The BAO funds proposed for the Parrot Project are proposed to come from the Stream Restoration and Waste Area Improvements/Revegetation categories. The Stream Restoration funding is for improving habitat in the reach of Silver Bow Creek, Blacktail Creek and its small tributaries within BAO. No projects have been specifically identified for these funds at this time.

NRDP proposed using \$3 million from the Stream Restoration category because EPA's proposed remedy has DEQ completing the Blacktail Creek remediation/restoration within BAO with settlement funds from AR. The State has revised the UCFRB Restoration Plan amendment to include \$5 million proposed to be transferred from the SSTOU Remediation Fund to the UCFRB Restoration Fund with \$2.5 million to partially reimburse the BAO Restoration Plan Stream Restoration category. Waste Area Improvements/Revegetation funding was allocated to restoration projects that would improve previously capped mine waste areas, as well as mine waste areas within BPSOU that did not exceed action levels for lead and arsenic. Specific areas have not been identified for these actions; however, it was assumed these funds would be spent on approximately 100 acres of mine waste areas and tree and shrub planting with BPSOU. The State reduced the amount allocated to \$2.3 million of the remaining \$4.8 million to the Parrot Project. As proposed in the BAO Amendment, none of the \$2.7 million allocated to restore the 100 acres has been spent and approximately \$555,441 of the \$2.08 million allocated to tree and shrub planting has been spent. With the proposed reimbursement of \$2.5 million from the UCFRB Restoration Fund SSTOU Excess, the BAO Fund will have a balance of \$8.7 million. Potential reimbursement in the event there are future settlement proceeds available for such purpose would include the BAO Fund receiving 35% of the available settlement funds.

Comment 21: Three commenters (7b, 8b, 30c) commented the BAO Amendment will remove the remainder of the restoration monies from the BAO Fund.

Response: The BAO Restoration Fund as of June 2019 had a balance of \$11.5 million. The BAO Amendment proposes to move \$5.8 million to the Parrot Project, leaving a balance of \$5.7 million in the BAO Restoration Fund.

Comment 22: Two commenters (2f, 29a) commented the BAO restoration fund are inadequate to provide complete restoration. Downstream communities have benefited from restoration projects, it is Butte's turn.

Response: As indicated above, the BAO Restoration Fund will have a balance of \$5.7 million after the amendment. Also, it is anticipated if the BPSOU Consent Decree is finalized, a portion of the funds allocated to the Parrot Project could be reimbursed, although it is unknown at this time whether and how much would be reimbursed.

In response to the comment that the downstream communities have benefited from restoration projects; this is a correct statement, however; the UCFRB Restoration Fund has been allocated throughout the UCFRB as recommended by the UCFRB Advisory Council. Butte Silver Bow County has been granted or allocated more than \$100.9 million from the UCFRB Restoration Fund. Silver Bow County has received the largest amount of the settlement, with 46% (or \$129 million) of the natural resource damage funds the State has recovered from the settlements in *Montana v. Atlantic Richfield Company*. Deer Lodge County is the next greatest recipient, with 24%, followed by Powell County with 18%, Missoula County with 8%, and Granite County with 3%. See Attachment B for a list of projects per county.

Comment 23: Ten commenters (7b, 7c, 7d, 8c, 8d, 10b, 29b, 30b, 33b, T-1) commented 2/3 of the BAO Fund have been used for non-restoration activities. Find alternative source of funding from UCFRB Restoration Fund Reserves (they have more funding) to fund the Parrot and allow

BAO restoration funds for true restoration. Or why can't we take the BAO \$5.8 from the Aquatic and Terrestrial Reserves, so we do not have to wait and bet on recouping funds from the CD?

Response: As noted in Comment # 1, the Parrot Project is a restoration project since it was not being removed under the proposed BPSOU remedy. In addition, the replacement of groundwater services, including the construction of the Basin Creek Water Treatment Plant, are groundwater replacement projects.

Also see Comment # 20.

Comment 24: Two commenters (17a, 27c) commented the proposal to take money from the Upper Clark Fork River Restoration Plan and use it to do remediation at Parrot Tailings is a bad idea. Restoration funds are desperately needed for their original purpose "to replace and restore lost natural resources"--not to clean up contamination in urban Butte. The UCF Restoration Plan dollars are allocated in an ambitious, but well-crafted restoration plan, worked out over years by many stakeholders, to restore the river, the tributaries and the upland areas, particularly fish and wildlife habitat.

Response: See response to Comment # 20. NRDP proposed to allocate funding to the Parrot Project that was currently available and not allocated to specific projects. The \$8.0 million from the UCFRB Restoration Fund Aquatic and Terrestrial Greenway allocation meets these parameters. The revised reimbursement process has the UCFRB Restoration Fund receiving 51% of available settlement funds as SSTOU Excess funding for priority restoration actions consistent with the 2012 Final Upper Clark Fork River Basin Interim Restoration Process Plan.

Comment 25: One comment (27b) was received stating the Butte Groundwater Fund is the most appropriate source of a loan for completing the Parrot Project, more so than the BAO Fund and the UCRBB Aquatic and Terrestrial Reserves.

Response: See response to Comment # 20. The interest accrued since 2012 to the Butte Groundwater allocation has not been allocated to a specific project. The \$500,000 is also unspent.

Comment 26: Comment (28b) asks the SST Excess funds currently in the UCFRB Aquatic and Terrestrial Reserves be expended first, before BAO and Butte Groundwater Funds are expended.

Response: The State believes the expenditure process in the amendments fairly and evenly uses the available funds.

Comment 27: BSB (28) supports all three amendments subject to the BAO and Butte Groundwater Funds being fully reimbursed from the proceeds of any settlement with BP, before any reimbursement to the UCFRB Aquatic and Terrestrial Reserves. BSB commented this revised reimbursement strategy is in better alignment with the restoration priorities in the Upper Clark Fork headwaters area and the location where the natural resource damages occurred. The Streamside Tailings Remediation Excess Funds would appear to be the best fit to complete the Parrot Project and are already earmarked for projects in the headwaters area in the Upper Clark Fork Restoration Plan.

Response: The restoration priorities for the UCFRB are outlined in the 2012 UCFRB Final Process Plan, which BSB is on record supporting, are located throughout the UCFRB. The 2019 UCFRB Aquatic and Terrestrial Resources Restoration Plans provides specific watersheds and terrestrial areas as priority areas, several of which are in the vicinity of the Parrot Project (Blacktail Creek upstream of Father Sheehan Park, Basin Creek above the Basin Creek Reservoir and Silver Bow Creek). No priority terrestrial areas have been identified in the Butte area. The Streamside Tailings Remediation Excess Funds are designated for additional unfunded restoration of aquatic and terrestrial resources within the UCFR drainage at and above Deer Lodge, with Cottonwood Creek as the northern boundary, including Silver Bow Creek and Warm Springs Creek.

Considering the modifications to the amendments based on the public comments, the reimbursement percentages were modified as shown below. This new set of proportions is reached based on the total net contribution of the BAO Fund after the reimbursement of \$2.5 million, as specified in Comment #20; the reimbursement percentage calculation includes the previous contributions from the BAO Fund of \$10 million and from the UCFRB Restoration Fund/SSTOU Excess Fund of \$8.5 million.

- (a) BAO Fund: 35% to reimburse the Stream Restoration and Mine Cap Improvements/Revegetation categories.
- (b) UCFRB Restoration Fund SSTOU Excess: 51% to reimburse SSTOU Excess funding for funding priority restoration actions consistent with the 2012 Final Upper Clark Fork River Basin Interim Restoration Process Plan.
- (c) UCFRB Restoration Fund/BSB Groundwater Restoration Plan: 14% to be allocated by BSB consistent with the 2012 Final Upper Clark Fork River Basin Interim Restoration Process Plan.

A table showing the funding transfers and reimbursement waterfall is included with these responses to Comments as Attachment C.

Comment 28: Four commenters (20a, 21a, 22b, 25b) commented UCFRB Restoration Fund should be protected, without transfer of funds to the Parrot Project. We recognize the importance of the Parrot Project but believe such transfer of funds will reduce the opportunity to fully restore the Upper Clark Fork River, its fishery, and surrounding wildlife as well as enhancing the desirability of the valley attracting new businesses.

Response: The State believes the allocation of funds in the amendments fairly and evenly uses the available funds.

Comment 29: One commenter (20b) stated if any UCFRB Restoration Funds are transferred to the Parrot Project such funds should be repaid to the UCFRB Restoration Fund.

Response: The State believes the allocation of funds in the amendments fairly and evenly uses the available funds. If a BPSOU consent decree is finalized, it is anticipated some of the funds, but likely not all, would be reimbursed.

Comment 30: Two commenters (24c, Taa) commented the proposed transfer will deplete resources for needed restoration in Blacktail Creek, Silver Bow Creek and the CFR as restoration

needs already exceed the remaining funds. The UCFRB Reserves are not "excess funds;" for every dollar lost from these funds, there will be a commensurate loss in the restored natural resources of the UCFRB.

Response: See response to Comment # 23. NRDP recognizes there are not enough restoration funds to meet all the restoration goals in the UCFRB.

Comment 31: Three commenters (2g, 24d, T-bb) supported proposed division of expenditures between the three funds and they reimbursement of the funds with a future settlement.

Response: Comment acknowledged.

Comment 32: One commenter (T-s) asked, how come we are not proposing to use the Clark Fork River OU cleanup fund of \$94 million?

Response: The about \$95 million dedicated to the Clark Fork River Operable Unit remediation are not eligible to fund the Parrot Project. The 2008 *Montana v. Atlantic Richfield Company* and *United States v. Atlantic Richfield Company* settlement included funding for the Department of Environmental Quality to implement the remedial action within the Clark Fork River Operable Unit. The 2008 consent decree specifically provides for these funds to be spent within the operable unit for implementation of the remedy. The Clark Fork River Operable Unit boundary is the confluence of Warm Springs Creek and the Silver Bow Creek north of the Warm Springs Ponds downstream to the Milltown Reservoir.

Comment 33: One commenter (33c) commented DEQ should release remedy funds (from SSTOU) to finish the Parrot Project.

Response: The State has revised the UCFRB Restoration Plan amendment to include \$5 million proposed to be transferred from the SSTOU Remediation Fund to the UCFRB Restoration Fund. \$2.5 million will partially reimburse the BAO Restoration Plan Stream Restoration category and the remaining \$2.5 million is being allocated to the Warm Springs Ponds area for the NRDP to conduct aquatic and terrestrial restoration planning and restoration actions to be implemented in conjunction with the Warm Springs Ponds OU Records of Decision. In the future, DEQ may release additional SSTOU Excess Remediation funds to the UCFRB Restoration Fund. These funds would be designated for additional unfunded restoration of priority aquatic and terrestrial resources within the UCFRB drainage at and above Deer Lodge, with Cottonwood Creek as the northern boundary, including Silver Bow Creek and Warm Springs Creek per the 2012 UCFRB Final Process Plan.

Category D: Public Process used for Amendments.

Summary: Three general comments specifically commented on the restoration plans amendment review, comment and approval process being used.

Comment 34: Two commenters (10c and 12d) requested UCFRB AC/BNRC meeting minutes/transcripts should be submitted as comments. Comment letter # 10 was submitted jointly by the UCFRB Advisory Council and the Butte Natural Resources Damage Council.

Response: The transcripts from the August 5, 2019, joint UCFRB AC/BNRC meeting were recorded by a court reporter and have been included in this responsive summary identified by the “T.”

Comment 35: Four commenters (13a, 14c, 14f, 19f) stated the amendments are hard to comment on due to short timeframe and the full story is behind closed doors. Reimbursement discussions are "soft"/nonbinding. The proposed fund transfer will indeed set a precedent, or at least an expectation, that cleanup dollars are fungible and can be moved between restoration and remediation, across operable units, and between projects.

Response: Comment acknowledged.

Comment 36: Ten commenters (14d, 15c, 17b, 19d, 24a, 33a, T-c, T-h, T-r, T-x) commented the process used for these amendments undermines credibility of the State restoration planning process, sets a dangerous precedent, and undermines the significant investment of time by many volunteer members of the BNRC, UCFRB AC, and the public. The (August 5th) meeting is not a proposal it is an informational meeting about what is going to be done. Has the Governor already approved this proposal? Has he weighed in on these proposals? What is the purpose of an AC/BNRC meeting if this is being handled bureaucratically?

Response: Yes, the Governor identified the Parrot Project as a priority and requested that NRDP move forward with developing the draft amendments. However; he did not approve the amendments prior to receipt of public comment and the UCFRB AC/BNRC meeting. The Governor has personally reviewed and considered comments submitted in making his decision on the Amendments. The Governor also wants to acknowledge and thank all the members of the BNRC and the UCFRB AC for their time and service to the State. Importantly, NRDP and the Governor as Trustee have modified the proposed amendments to address the comments received.

Category E: Comments on Timing of Amendments.

Summary: Commenters submitted comments concerning the timing of the restoration plan amendments.

Comment 37: Three commenters (13b, 14e, 15a) generally opposed the Amendments or requested to delay the Parrot Project until it is guaranteed funds can be returned to funding sources through the CD and did not understand the urgency of proposals, can we wait?

Response: Waiting until a CD is reached and made publicly available was an option considered by the Governor in connection with the Amendments. While achievement of a CD and possible settlement would provide additional clarity of the risk to funds allocated as part of these amendments, they nevertheless would be necessary to undertake. Any settlement proceeds would first be used to complete remedial actions at Blacktail Creek and the balance would become available only thereafter to support other restoration/remedial needs like the Parrot Project. Were the BPSOU parties not able to achieve a settlement and CD, the Governor believes completion of the Parrot Project remains a top priority. The other factors that support the Governor’s decision to proceed before a CD is reached include the desire to maintain the momentum of an already-successful project, to enable BSB to get its part of the Parrot Project (the Shops relocation) started this construction season, and to keep the promise he made to the people of Butte.

In light of NRDP's implementation of the Parrot Tailings Interim Groundwater Pumping Plan, the State acknowledges there is no immediate environmental exigency driving this process forward, other than the possibility that the agreement with Montana Resources to accept contaminated groundwater expires in 2022. The State is aware of statements in the press by MR's representative that they would be willing to extend the arrangement. The Governor appreciates this statement and intent, and appreciates MR's support of the Parrot Project, but believes the appropriate approach is to complete the more durable removals now rather than expend resources without a plan to maintain those costs indefinitely if needed.

Comment 38: Four commenters (13c, 14c, T-f, T-dd) were concerned about the speed of this process; is it being driven in part by the need to tie the shop removal with the Parrot Tailings removal action? Are the shops being moved or new ones being built? Why aren't we waiting for the CD so we know the numbers?

Response: See Response to Comment # 37. In general, the BSB shops are being replaced. BSB may also move a portion of the shops.

Comment 39: One commenter (15c) commented the current reallocation proposal appears hasty and the focus is too narrow and requested NRDP and the Trustee take a long-term view and watershed approach on what is needed to restore a healthy fishery in Silver Bow Creek and the upper Clark Fork.

Response: See Response to Comment # 37. In addition, the Governor believes the Parrot Project does support and does take a long-term view of restoration in the Clark Fork Basin.

Comment 40: One commenter (19c) commented the Parrot Tailings is a long-term, chronic issue that needs to be addressed, but does not need to be solved immediately.

Response: See Response to Comment # 37.

Category F: Oppose the Parrot Project.

Summary: Several comments received expressed reasons for opposing the Parrot Project.

Comment 41: One commenter (9a) commented they were against the Parrot Tailings Removal project, and it should never have been started.

Response: Comment acknowledged.

Comment 42: Two commenters (13a, 32a) opposed the amendments. One indicated they must oppose the proposed amendment since we do not have the full story on the negotiations and there is no guarantee any funds used will be returned. The second did not agree with the BAO amendment because restoration dollars need to be used strictly for restoration.

Response: Comment acknowledged.

Category G: Other/Miscellaneous Comments.

Summary: Several comments received did not fit into a category; these are addressed below.

Comment 43: One commenter (T-g) asked when is the Consent Decree coming?

Response: EPA has extended the deadline for the CD negotiations until October 11.

Comment 44: One commenter (18a) noted despite all the restoration successes in the UCFRB there is still a lot to do. We hope and expect to fully restore those resources of clean, cold, fishable waters, healthy riparian zones and adjacent properties.

Response: Comment acknowledged.

Comment 45: One commenter (31c) asked, does the State of Montana have any responsibility for ensuring environmental justice is served in Butte?

Response: NRDP appreciates the commenter's concerns about environmental justice. Although this is a very important issue, it is not one the NRDP's recovered natural resource damages can address. The State recommends this concern be addressed to EPA and BP-AR.

Comment 46: Two commenters (6a, 31d) commented they will hold the State to its word that resulting funds associated with the CD will fully repay funds taken from UCFRB Funds. They want kids in Butte to have a real stream.

Response: NRDP stated in the restoration plan amendments, "it is anticipated that some of the funds transferred to the NRDP Parrot Tailings Removal Fund under the three amendments could be reimbursed from proceeds from 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 the Montana Department of Environmental Quality to complete the Blacktail Creek and Confluence portions of the BPSOU remedy."

The desire for a real stream in Butte for kids to have is acknowledged. The NRDP has worked and is working with BSB and other partners to restore and improve the fishery of Silver Bow Creek, Blacktail Creek, Browns Gulch, Basin Creek, Basin Creek Reservoir and Moulton Reservoir.

Comment 47: Two commenters (31e, T-j) state starting downstream rather than at the source of the pollution means Butte and SBC has not received the attention it deserves.

Response: The natural resource damage funds have not been restricted to projects within a specific location of the UCFRB. Because BPSOU, the Clark Fork River OU and the Anaconda Uplands were unsettled until 2008 restrictions did limit these areas from receiving NRD funds during the NRDP grants program from 2001 through 2008, if the project replaced, would be undone, or interfered with potential remedial actions. Over \$128 million of restoration funds have been allocated to Butte/Silver Bow County since 2001.

Comment 48: Three commenters (T-I, T-k, T-s) asked when does Butte become the priority? This is where the contamination came from, how much NRD money has been spent on various projects (throughout the basin)? Is Butte Area One out of consideration for NRD funding until there is a CD? Nothing has been allocated to SBC starting at Texas Ave., right where the Parrot tailings are. Consider Butte before you take any funding that can be used for restoration.

Response: See Comments # 17 and 47.

Comment 49: Two commenters (T-xx and T-y) commented Butte is a great lab for restoration and part of its future. Taking the funding away from the Mine Waste Cap/Revegetation allocation will take the future of our (MT Tech) programs away. It is critical the MT Tech Restoration program continue to protect the investment in the areas that the Mine Waste Cap/Revegetation allocation is to treat. Recommend the Mine Waste Cap/Revegetation allocation be prioritized for reimbursement.

Response: Considering public comment the reimbursement process proposed in the amendments has been revised. First, the BAO Fund Stream Restoration category will receive \$2.5 million of the \$5.0 million of the SSTOU Remediation Excess upon EPA approval. Potential reimbursement in the event there are future settlement proceeds available for such purpose would include the BAO Fund receiving 35% of the available settlement funds. Thus, the Mine Waste Cap/Revegetation is prioritized for reimbursement.

Comment 50: One commenter (T-hh) asked, does the BAO amendment propose that MT Tech's Native Plant Program in consultation with BSB implement the vegetation practices?

Response: The BAO amendment proposes this work be conducted through the Montana Tech Native Plant Program, in consultation with Butte-Silver Bow.

Comment 51: One commenter (19b) stated “we are concerned that the zero-sum implications of the proposed fund transfer, where a dollar more for one project means a dollar less for another are already pitting one group against another: Butte against Missoula, Silver Bow County against Powell County, the Parrot against the Upper Clark Fork. We saw it at the public meeting at the Butte archives, and we’ll see it in the written comments. We are all Montanans, and those of us who live the in the Clark Fork Basin are united by the river that flows through it, from its headwaters in Butte, through the Deer Lodge Valley, downstream to Missoula and beyond. We strongly urge the State to support a more unified and collaborative climate by securing the additional funding necessary for Parrot from the responsible party.”

Response: The State agrees. See Comment # 37

ATTACHMENT A: List of Comments & Comment Letters

No.	Individual/Association	City/Area
1	Greeley Neighborhood Community Development Corporation (GNCDC) – Steve McGrath	Butte, MT
2	Beverly Hartline, Ph.D.	Butte, MT
3	Fritz Daily – first comment	Butte, MT
4	Fritz Daily – second comment	Butte, MT
5	Fritz Daily- third comment	Butte, MT
6	Silver Bow Creek Headwaters Coalition (SBC Headwaters Coalition) – Fritz Daily	Butte, MT
7	Headframes Spirits – John McKee	Butte, MT
8	Bill Callaghan, BNRC	Butte, MT
9	Al Beavis	Butte, MT
10	Emmett Riordan, BNRC	Butte, MT
11	Bob & Chris Worley	Butte, MT
12	UCFRB AC & BNRC – Bill Rossbach & Elizabeth Erickson	Butte, MT
13	Watershed Restoration Coalition – John Hollenback	Deer Lodge, MT
14	Powell County – Carl Hamming	Deer Lodge, MT
15	Clark Fork Coalition Technical Advisory Board – Joe Griffin	Butte, MT
16	Alliance for the Wild Rockies – Mike Garrity	Helena, MT
17	William McDowell	Missoula, MT
18	George Grant Chapter TU – Roy Morris	Butte, MT
19	Clark Fork Coalition – Karen Knudsen	Missoula, MT

20	Hellgate Hunters & Anglers – Adam Shaw	Missoula, MT
21	Greg Munther	Missoula, MT
22	Montana Trout Unlimited – Clayton Elliott	Missoula, MT
23	Krystal Weilage	?
24	Trout Unlimited – Casey Hackathorn	Missoula, MT
25	Kathy Hadley	Deer Lodge, MT
26	Evan Barrett	Butte, MT
27	Bruce Farling	Missoula, MT
28	City-County of Butte-Silver Bow – Jon Sesso	Butte, MT
29	Butte Project Green and Restore Our Creek Coalition – Richard Tretheway	Butte, MT
30	BNRC – Elizabeth Erickson	Butte, MT
31	Mary Kay Craig	Butte, MT
32	Robert Pal	Butte, MT
33	BNRC – Sr. Mary Jo McDonald	Butte, MT

Greeley Neighborhood Community Development Corporation Inc.

c/o 2601 Grand Ave., Butte MT. 59701, Phone: 406 723 3736 e-mail greeleyneighborhoodbutte@outlook.com

*Seeking common solution to common concerns,
thus making our neighborhood, our community a safer, healthier, happier, harmonious, and
a more attractive place in which to live and work, by working with our local government.*

RECEIVED

August 8, 2019

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

AUG 16 2019

**NATURAL RESOURCE
DAMAGE PROGRAM**

We are submitting comments relative to the 2019 BAO Amendments that would reallocate and transfer a total of \$5.8 million from the allocations made in 2012 to the Stream Restoration, and the Waste Area Improvement/Revegetation categories, as well as an additional \$10 million from the UCFRB Aquatic and Terrestrial Reserves to the NRDP Parrot Tailings Removal Fund.

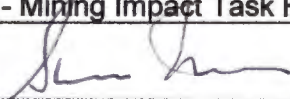
We object to:

- A 1) The continuation of Phase II of the "Parrot Tailings Waste Removal Project" without consideration of less costly alternatives that may achieve the same goal, i.e., the protection of Blacktail/ Silver Bow Creek from metal contamination. In that it has been found that there is a plume of metal-laden water continually seeping into the Parrot Tailings site from upslope that will have to be hydraulically removed into for an indefinite period, possibly in perpetuity, it is questionable whether physically removing the remaining solid waste will have any impact on the length of treatment required to prevent contamination of the creeks draining the valley.
- B 2) The contaminated waste from the Parrot Tailings site being transported to and repositied at a site above ground. In that the waste is being removed from a location where it poses no risk to human health and being repositied at a site above ground where the metal and arsenic-laden dust can be blown into the Butte Priority Soils Super Fund Site thus putting at risk re-contamination of the site and posing a hazard to human health.
- C 3) Using Restoration Funds for Remediation, since those monies that are supposed to be used to restore resources lost to mining, educate a workforce in the art and science of restoration, and provide jobs which stimulate the local economy, we think that depleting Restoration Reserve funds with no guarantee of reimbursement is unwise.
- D 4) Relocating the County Shops and excavating underneath at a cost of \$16 million if more cost-effective alternatives are available. In that the possibility exists of capturing the contaminated groundwater from underneath the shops by expanding the groundwater capture capability of the Phase I system after arranging with the PRP to accept and treat the pumped groundwater, it makes more sense to leave the Shops in their current location

For and On Behalf of the Greeley Neighborhood Community Development Corporation, Inc.

GNCDC, Inc. - Habitability - Mining Impact Task Force

Steve McGrath, Chair



From: [Beverly Hartline](#)
To: [Natural Resource Damage Program](#)
Cc: [Bev Hartline](#)
Subject: Comments on 2019 Restoration Plan Amendments
Date: Saturday, August 10, 2019 5:07:55 PM

Dear NRDP,

Thank you for the opportunity to comment on the proposed amendments to the Butte Restoration Plan. I have read the proposed amendments and I attended the joint meeting of BNRC and UCF citizen committee earlier this week.

A Most importantly and urgently, it is ABSOLUTELY ESSENTIAL to remove the Parrot Tailings and to proceed with this project without delay, thoroughly, and expeditiously. Phase I of the Parrot Removal project last summer found contamination levels that are for many contaminants higher--even much higher--than in the Berkeley Pit. Without removing the Parrot Tailings, the progress on remediating and restoring Silver Box Creek and the Clark Fork will be vulnerable to being eradicated, as groundwater from the Parrot continues to enter the Creek. In fact, the contamination of the groundwater discovered during Phase I is WORSE than anticipated. Obviously funding needs to be identified and identified rapidly.

B Also of the utmost importance, but not so immediate and urgent, is the need to provide over the next several years full and complete restoration of Butte, Upper Silver Bow Creek, and the Upper Clark Fork. The proposal in the Amendment is to take Additional funding from the Butte Area One restoration along with some funding from the Upper Clark Fork Restoration allocations.

These proposed sources of funding were each funded with specific scopes and objectives in mind.

C * What is the status of the restoration projects that were intended to be funded using the funding proposed for diversion to the Parrot removal? [Note that Parrot removal is remediation, not restoration] Without this remediation, the longevity of restoration efforts will be severely compromised. If these projects are finished, then the funding could be considered surplus and it would be reasonable to reallocate it to a different use. If the projects and scope are not finished, then, while the funding could be borrowed for the short term, it must be replaced within a few years.

F * In the case of Butte Area One, the available restoration budget is dramatically inadequate to provide a complete restoration, as the community of Butte (residents, Tech students, tourists, and visitors) deserves. It appears that downstream communities have benefited wonderfully from the restoration projects already completed in their locales. It is Butte and its environs that sacrificed a lot so the rest of Montana and the United States would have copper to become electrified, and copper and other metals for many other economically vital purposes.

A, F Butte residents, like other Montanans, have a Constitutional Right to a clean and healthful environment (Montana Constitution, Article IX Section 1). They do not have such an environment now, and it will certainly take years to decades. Removing the Parrot Tailings immediately is a critical remedial step, which MUST proceed without delay. However, it is unacceptable and contrary to Montana's Constitution not to have funding to complete the restoration, as well. And as several of the engaged Butte citizens point out, there is also a significant environmental justice issue here.

G I support taking any funding that is available now, and using it for the Parrot Tailings Removal. If that funding comes from the restoration budget for Butte or the Upper Clark Fork, an additional budget plan that IS NOT CONTINGENT ON ANYTHING, needs to be developed, committed to, and publicized to restore the restoration funds (including the first \$10 million from the Butte Area One Restoration that started the removal project). The time scale for restoring the funds could be as long as 5 years. It does not matter to me whether that funding comes from the Responsible Parties, the EPA or another Federal Agency, the Consent Decree, or the State of Montana. Given who benefitted from damaging the Butte environment, the Responsible Parties and Consent Decree would be my first choice. But if the Consent Decree does not require the responsible parties to pay for Remedy, then the Federal Government should provide an alternative additional funding source for the restoration. If the Federal

Government defaults, then somehow the State of Montana should fill the gap, and not leave the Butte community, Butte residents, and local landscape and the Silver Bow Creek watershed in violation of our Constitutional Right to a Clean and Healthful Environment.

As a person who moved to Butte comparatively recently, I am not personally familiar with the process that got us to where we are today--which seems to be dramatically improved from several years ago. Clearly, there is a long way still to go. However, if the restoration budget, which was allocated several years ago is not adequate to restore a clean and healthful environment, then there should be a process to address the budget shortfall and complete the remediation and the restoration.

Thank you for the opportunity to comment. I greatly appreciate the communication and the public engagement process. I have attended many of the meetings over the past few years, and participated in community plantings and other ways to help. Please do not hesitate to contact me, if you have any questions regarding my comments.

Sincerely,

Beverly Karplus Hartline, Ph.D.
340 Telluride Rdg
Butte, MT 59701
Beverly.hartline@gmail.com

From: [Fritz Daily](#)
To: [Natural Resource Damage Program](#)
Subject: Comments on 2019 Restoration Plan Amendments
Date: Monday, August 12, 2019 7:50:09 AM



Fritz Daily
1901 Roosevelt Ave.
Butte, MT 59701

August 10, 2019

Please include the following comments in the official record to the proposed 2019 Restoration Plan Amendments for Silver Bow Creek from Texas Avenue to Montana Street--The "last first mile" of Silver Bow Creek cleanup and restoration!

A

Governor Bullock should tell the EPA, Arco/British Petroleum and the Butte Silver Bow Council of Commissioners that the State DEQ and NRD will absolutely not sign any Consent Decree unless the Parrot Tailings and the cleanup and restoration of Silver Bow Creek and its Corridor from Texas Ave to Montana Street is cleaned and remediated using REMEDY dollars provided by the Atlantic Richfield/British Petroleum Company as is guaranteed under Superfund and State Laws and the Montana Constitution!

The Record of Decision Amendment on Butte Priority Soils and the Proposed Natural Resource Damage Amendments that continue using RESTORATION dollars to complete the removal of the Parrot Tailings and the proper cleanup and restoration of Silver Bow Creek and its Corridor from Texas Avenue to Montana Street, must be changed to use REMEDY dollars immediately to do what is right and reflect the intension of the vast majority of Butte residents.

There is absolutely no question under Superfund and State Laws and the Montana Constitution that the Atlantic Richfield Company now British Petroleum Company is totally responsible for the cleanup using REMEDY dollars---They made the decision to close the Butte Mines, to close the Anaconda Smelter, to close the Berkeley Pit, shut off the underground pumps in the Kelley Mine that caused the Berkeley Pit and Butte mine flooding, and finally they closed the East Continental Pit that ended mining in Butte as was known for 100 years

With the following information, it is unconscionable and unbelievable that the current plan using RESTORATION dollars continues! Restoration dollars are designed to return a damaged area to productive use after a responsible Superfund cleanup has been completed.

Harley Harris the Legal Counsel for the Montana Department of Environmental Quality--- *"No reasonable person believes this water {Parrot Tailing groundwater} isn't moving towards the Creek"-- a pointed reference to the EPA, which has precisely made that assertion.*

- **Jim Ford Project Manager with the Natural Resources Damage Council---***"The*

highly contaminated groundwater is much more extensive than we had originally anticipated and the soils below the tailings are also more extensively contaminated". "The Parrot Tailings and {plume} contains 15 times more copper, 5 times more lead, and twice as much cadmium as the Berkeley Pit. It contains the same amount of arsenic and zinc as the Berkeley. It is the most heavily contaminated mine water in the State and probably the entire United States."

- **Rob Collins, State Natural Resource Damage Attorney**---*"The State has a difference of opinion with the EPA in that the State does not believe that the sub-drain captures all of the contaminated groundwater". The State of Montana is adamant that the Reverse French Drain does not operate efficiently!*
- **Judge Brad Newman on Silver Bow Creek Headwaters Coalition's Successful Lawsuit against the State of Montana**---*"DEQ is bound by the decision! "How can DEQ and the county enter into a consent decree that ignores the law of Montana? Silver Bow Creek is a natural water course. The decision I made the state did not appeal. It was a valid legal precedent. Despite man-made alterations, it is a natural water course not just in name only. Silver Bow Creek's legal status must be observed by the interested parties in this consent decree."*
- **Albert Kelley Senior Advisor to EPA Administrator Pruitt**---*"Whatever has happened with the EPA in the past, we that are here now own that. We cannot change that but perhaps we can effect completing this remedial action!"*
- **Senator Jon Tester**---*"If you have good information, you make good decisions and if you have poor information you make poor decision".*
- **Montana Department of Environmental Quality, 2006**---*"DEQ does not concur with the over-reaching decision to leave accessible, major sources of groundwater contamination in place. We refer specifically to the Parrott Tailings, Diggings East tailings and the North Side Tailings. Our concern is that leaving these wastes in place poses a significant and permanent threat to groundwater and to the long-term water quality of Silver Bow Creek".*

I am offended learn in the Agreement in Principle and will be part of the new Consent Decree and that Arco/BP have been taken "off the hook" by the EPA, State and Local Government for the cleanup of the portion of the Silver Bow Creek Corridor from the Headwaters at the Parrot Tailings area at Texas Avenue to Casey Street, west of Harrison Avenue. The State of Montana has not only accepted removal of the Parrot Tailings they are now responsible for REMEDY and RESTORATION of Silver Bow Creek and its Corridor from Texas Avenue to West of Harrison Avenue at Casey Street using Restoration Dollars designed to restore the Butte area. Unbelievable!

B

The current plan uses \$15.8 million of Butte Priority Soils Restoration dollars and \$8 million of Greenway dollars of the total of Butte Restoration Dollars and \$8 million of the remaining Silver Bow Creek cleanup dollars for a total of \$31.8 million. If cleanup costs are indicative of past cleanup actions throughout the process the actual cost will be \$60 to \$70 million or more

From: [Fritz Daily](#)
To: [Natural Resource Damage Program](#)
Subject: Comments on 2019 Restoration Plan Amendments
Date: Monday, August 12, 2019 7:55:15 AM



Fritz Daily
1901 Roosevelt Ave.
Butte, MT 59701

August 10, 2019

Please include the following comments in the official record to the proposed 2019 Restoration Plan Amendments for Silver Bow Creek from Texas Avenue to Montana Street--The "last first mile" of Silver Bow Creek cleanup and restoration!

The three main criteria in the filing of the original 765 million Natural Resource Damage Lawsuit includes;

- **To compensate residents for lost use of the resource.**
- **To compensate the residents for damage to the resource.**
- **Most important, for the destruction of the Butte Aquifer---*A major portion of the lawsuit dealt directly with the destruction of the Butte Bedrock and Alluvial Aquifers. It was one of the primary purposes of the original lawsuit. Butte is one of the only cities in the United States that cannot use its groundwater aquifer as a drinking water source. 88% of the original Lawsuit claim was for damages that occurred in Butte, Anaconda and on Silver Bow Creek. The lawsuit was basically settled for \$118 million in addition to the \$80 million settlement to clean Silver Bow Creek and the \$18 million paid to the Salish Kootenai Indians.***

To date Butte Silver Bow Taxpayers have paid to protect the fisheries in Silver Bow Creek;

- ***Besides the \$10 million appropriated by the Butte Natural Resources Damage Committee, Butte Taxpayers were forced by the EPA to finance a \$40 million renovation to our entire water system, including the Big Hole Treatment Plant at Feeley Hill, or face huge monetary fines from the State and the EPA. A major portion of the lawsuit dealt directly with the destruction of the Butte Bedrock and Alluvial Aquifers, and was one of the primary purposes of the original lawsuit.***
- ***A \$30 State of the art nutrient reduction Plant as required by the Montana Department of Environmental Quality to prevent the discharge of nitrates to Silver Bow Creek***

Greenway Concept---Was a vision created by former Butte Chief Executive Don Peoples. It was developed and carried out by a quality group of Butte citizens known as Project Green to complete a trail system, along with all the positive amenities associated with the trail, beginning in Butte and continuing to Anaconda.

Butte Priority Soils---*Is a five-mile square area. It consists of the entire Butte Hill, Walkerville, Butte's section of Silver Bow Creek, the Parrott Tailings, Butte's Storm Sewer system, and Lower Area One that includes the area West of Montana Street including the*

Colorado Tailings area and the Metro Sewer area. EPA is the lead agency.

“Stakeholders” in this critical decision---Are the folks from Butte and the Clark Fork and Columbia River Basins and most importantly the future of our great town---our kids and grandkids! It is not the EPA/State representatives, the Atlantic Richfield British Petroleum Company and the contractors as claimed. The true stakeholders

State and the Local Government Agreement---Includes a clause known as “like for Like”---meaning the State is only willing to pay for what currently exists at the County Shop area. Two years ago, Dave Schultz of Butte Silver bow estimated the movement of the County Shops would cost \$14.2 million and the State refused to accept that number. The County then reduced that amount to \$12.2 million by eliminating the “fuel Bay” and the movement of a couple of bus barn buildings. I am now told the cost is now \$1.3 million off and who knows what the “Trump Tariffs” are doing to construction costs?

The Montana Bureau of Mines estimated several years back that the removal of the Parrot Tailings would cost \$30+ million. In addition, the State has now or will in the Consent Decree, accepted cleanup and restoration of Silver Bow Creek and it's Corridor from Casey street all the way back to Texas Ave not just removal of the Parrot and the County Shops. We now know, the Parrot Plume, that has traveled under Butte homes and the Columbus Plaza. Sadly folks from the Bureau of Mines under the guidance of the Butte Natural Resource Damage Council have know this info for years and it has been completely ignored by the EPA, State and Local Government!” WOW!

Montana Constitution;

- **Section 3. Water rights.** Article IX Section 3 of the Montana Constitution States---“All waters within the boundaries of the State are the property of the State, held in trust, for the use of its people.”
- **Section 3. Inalienable rights.** All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment...
- **Section 2. Reclamation.** (1) All lands disturbed by the taking of natural resources shall be reclaimed.

Last first mile of Silver Bow Creek from Texas Avenue to Montana Street was completed backwards by starting at Milltown Dam and the Ramsay Flats and not at the Headwaters at Texas Avenue in Butte. Silver Bow Creek was listed in 1982 and is #20 on the National Superfund Priority List of Superfund Sites. The Berkley Pit was added to the Site in 1985.

"Cut and Run" written by a reputable group of local Hydrologists and Hydro-Geologists who seriously criticized the Record of Decision on Butte's portion of Silver Bow Creek and the Parrott Tailings area. This is a quote from that publication; *The U.S. Environmental Protection Agency is prepared to walk away from the nation's largest Superfund site. More precisely, EPA is prepared to allow the responsible party, Atlantic Richfield Company (now British Petroleum/ARCO), to walk away without fully cleaning up the site. As a result, millions of cubic yards of mine tailings, smelting slag and other wastes will drain in perpetuity into the headwaters of the Clark Fork and Columbia Rivers. And the City/County of Butte-Silver Bow will be relegated into an industrial waste heap with dim*

economic prospects for recovery.

The question I am asked most often is why has Butte not received the cleanup and restoration that the community is guaranteed under Superfund and State law and the Montana Constitution and most importantly why did they start the cleanup of Silver Bow Creek in the middle and not at the headwaters in Butte where the damage originated?

My answer is always the same---Number one it is the incompetence of the agencies and the local government and number two is the anti Butte mentality that is so prevalent within the State and EPA

I am offended learn in the Agreement in Principle that will be part of the new Consent Decree and that Arco/BP have been taken “off the hook” by the EPA, State and Local Government for the cleanup of the portion of the Silver Bow Creek Corridor from the Headwaters at the Parrot Tailings area at Texas Avenue to Casey Street, west of Harrison Avenue. The State of Montana has not only accepted removal of the Parrot Tailings they are now responsible for REMEDY and RESTORATION of Silver Bow Creek and its Corridor from Texas Avenue to West of Harrison Avenue at Casey Street using Restoration Dollars designed to restore the Butte area. Unbelievable!

From: [Fritz Daily](#)
To: [Natural Resource Damage Program](#)
Subject: Comments on 2019 Restoration Plan Amendments
Date: Monday, August 12, 2019 8:13:26 AM

Please include the following comments in the official record to the proposed 2019 Restoration Plan Amendments for Silver Bow Creek from Texas Avenue to Montana Street--- The "last first mile" of Silver Bow Creek cleanup and restoration! These are the public comments I planned on making, and partially made, to the joint council meeting in Butte. I again was told these comments would not become part of the official record unless they were formally submitted to the State Natural Resource Damage program. My purpose for submitting so much info is because when the children of Butte and Montana are paying to responsibly clean Silver Bow Creek and its Corridor running through Butte that at least someone cared.

I am Fritz Daily a Butte Resident

Thanks for coming

I am a former seven-term Montana Legislator and I have been directly involved in promoting a responsible cleanup and restoration for Butte and the entire Clark fork Basin for 35+ years. I was directly involved as a member of the Butte Legislative Delegation when we were requested by then governor Schwinden as to whether the State should in fact pursue the original \$765 million lawsuit.

What you need to hear today are the facts and the truth. The fact of the matter is the EPA, the State and Local government have failed Butte and the entire Clark Fork Basin to not demanding we receive the quality cleanup and restoration that is guaranteed under Montana and Superfund Law and the Montana Constitution.

Sadly what you are being asked to do today is to correct that and to provide the necessary dollars to accomplish that goal!

I don't envy the position that you have been put in today. Your charge as members of the Natural Resource Damage Committees is to provide restoration of a cleaned Superfund Site---not to do cleanup work as you are being asked to do today. The fact of the matter is Butte has not been cleaned properly and the fact of the matter is the new proposal to amend the 2006 Record of Decision still does not provide that quality cleanup as well.

Here's a few things you absolutely need to know that you may or may not know;

- A • While you are being asked today to provide an additional \$5.8 million to the Parrot Tailings removal to the \$18 million that has already been allocated, the fact of the matter is the cleanup and restoration of Silver Bow Creek and its Corridor from Texas Avenue to below Harrison Avenue at Casey Street, if the cost of the other cleanup and restorations is comparison, this cleanup and restoration will ultimately cost I believe somewhere between \$60 and \$70 million.**
- B • You need to know who is actually responsible for the cleanup---There is absolutely no question under Superfund and State Laws and the Montana Constitution that the Atlantic Richfield Company now British Petroleum Company is totally responsible for the cleanup. They made the decision to close**

the Butte Mines, to close the Anaconda Smelter, to close the Berkeley Pit, shut off the underground pumps in the Kelley Mine that caused the Berkeley Pit and Butte mine flooding, and finally they closed the East Continental Pit that ended mining in Butte as was known for 100 years.

- I believe it is totally wrong for Arco/BP to be taken off the hook for the cleanup of the portion of the Silver Bow Creek Corridor from the Headwaters at the Parrot Tailings area at Texas Avenue to Casey Street.
- I believe it is totally wrong that we as a community are now being told if we do not accept the inferior cleanup and restoration now being proposed by the agencies and Arco/BP that we are going to get a worse inferior cleanup, by using Unilateral Orders.
- You need to know that there were three main criteria in filing the original 765 million lawsuit that basically was settled for \$118 million in addition to the \$80 million settlement to clean Silver Bow Creek and the \$18 million paid to the Salish Cooutini Indians; #1. Was to compensate residents for lost use of the resource. #2. Was to compensate residents for damage to the resource. #3. And Most important---Was for the destruction of the Butte Aquifer.

• You need to know, while all of your meeting are transparent and open, that all of the major decision that have been made to date and that are still being made were being made were made behind closed doors in secrecy with absolutely no public input.

• You need to know---That when the original 2006 Record of Decision on Butte Priority Soils was reached it was reached based on the premise that a “technically improbable waiver” was issued stating that it was impossible to remove the Parrot Tailing and the clean the contaminated ground water in the area. We now know that is absolutely false!

1. It was made believing the Parrot Plume was standing still and was not moving.
2. It was made not knowing the groundwater in the Parrott Tailings Area is more toxic than Berkeley Pit water.
3. It was made not knowing that substantially more water flowing to Silver Bow Creek than originally projected.
4. It was made believing the water was flowing at a much slower rate that we now know is actually happening.
5. And we now know because of the removal of the first phase of Parrot removal---!“The Parrot plume contains 15 times more copper, 5 times more lead, and twice as much cadmium as the Berkeley and it contains the same amount of arsenic and zinc as the Berkeley. And is the most heavily contaminated mine water in the State and probably the entire United States. Sadly folks from the Bureau of Mines under the guidance of the Butte Natural Resource Damage Council have know this info for years and it has been completely ignored by the EPA, State and Local Government!” WOW!

- Two basic premises were used in making this incompetent decision on the cleanup of Silver Bow Creek at its headwaters. #1 it was based on the fact that Silver Bow Creek flowing through Butte was sewer, and #2 it was based on the fact that it was technically impracticable to responsibly clean and restore the Creek and its corridor, and to leave contaminated “waste in place”. Both of these premises have now been proven to be totally false and inaccurate!

I recently had an opportunity to take a tour of the area with Andrew Wheeler, Senator Steve Daines, Attorney General Tim Fox and the Region Eight Administrator Doug Beevento. Here’s what I told them and want you to know; **The question I am asked most often is why has Butte not received the cleanup and restoration that the community is guaranteed under Superfund and State law and the Montana Constitution and most importantly why did they start the cleanup of Silver Bow Creek in the middle and not at the headwaters in Butte where the damage originated?**

My answer is always the same---Number one it is the incompetence of the agencies and the local government and number two is the anti Butte mentality that is so prevalent within the State and EPA

Finally, as I wrote to Greg Sopkin the new Region Eight EPA Administrator;

- **Not restoring Butte’s portion of Silver Bow Creek to a quality creek where children can fish and play is unconscionable and an irresponsible decision! The decision is the final decision for the Butte Superfund area and it along with the Berkeley Pit and Montana Pole decisions will have forever-negative environmental, economic and social consequences for Butte Montana!**
- **And yes we can have a real creek flowing through our town connected to the groundwater, as required of a Creek. You absolutely can! As Judge Newman Ordered in the successful Silver Bow Creek Headwaters Coalition Lawsuit, Silver Bow Creek from Texas Avenue to Montana Street is a Creek and protected in the Montana Constitution as Waters of the State of Montana.**
- **For the record--- Silver Bow Creek from Texas Ave to Montana Street is a Creek and a watercourse and not a sewer, a storm drain or a “water feature”! Judge Brad Newman confirmed this in his decision in the successful Silver Bow Creek Headwaters Coalition Lawsuit against the State of Montana!**
- **The “stakeholders” in this critical decision are not the EPA/State representatives, the Atlantic Richfield British Petroleum Company and the contractors as claimed by the EPA here tonight. The true stakeholders are the folks from Butte and the Clark Fork and Columbia River Basins and most importantly the future of our great town---our kids and grandkids!**
- **The most important issue I always stress in my presentations and in my writing and meeting with EPA, State and Local folks is the importance of Butte Montana in the shaping and creating of this great nation.**

From: [Fritz Daily](#)
To: [Natural Resource Damage Program](#)
Subject: Comments on 2019 Restoration Plan Amendments
Date: Monday, August 12, 2019 8:01:15 AM

Please include the following comments in the official record to the proposed 2019 Restoration Plan Amendments for Silver Bow Creek from Texas Avenue to Montana Street--The "last first mile" of Silver Bow Creek cleanup and restoration! I was told at the meeting in Butte that the only way for this handout I prepared for the joint councils, that it could not become part of the official record unless I formally submitted it to the State Natural Resource Damage Program

Fritz Daily
1901 Roosevelt Ave.
Butte, MT 59701

August 5, 2019

Information for the joint committees of the Butte Natural Resource Damage Council and the Upper Clark Fork Natural Resource Damage Council;

I am a member of Silver Bow Creek Headwaters Coalition along with Sister Mary Jo McDonald and Ron Davis that filed and won a Lawsuit against the State of Montana over Silver Bow Creek and its cleanup and restoration.

The goal of Silver Bow Creek Headwaters Coalition LLC was pretty simple---"We care, and we just wanted to make Butte a better and more environmentally safe place to live and improve the economy of our town. We wanted to achieve that goal by recreating a quality clean and restored meandering Silver Bow Creek flowing through the middle of our town where the children could play and fish and the adults of the community could enjoy the amenities of the cleanup and restoration as well!"

Judge Newman wrote in his final Order at the conclusion of our lawsuit
 He wrote; *"This litigation seeks to ensure that the State of Montana and its agencies follow the law."*

He wrote; *"In this case the Plaintiffs stand in the shoes of government. They are seeking as a private attorney general to force the State to act appropriately with respect to the State's waters held in trust for the public."*

Article XI Section 3 of the Montana Constitution States---"All waters within the boundaries of the State are the property of the State, held in trust, for the use of its people."

Judge Newman also confirmed in his decision that the Creek is a watercourse and a "creek" and not a "sewer" as claimed by the State of Montana and the Environmental Protection Agency.

He wrote; *"The issue raised in the Complaint is not what would happen to restoration of the creek should the State improperly change the name of the watercourse, but what already has occurred and will occur in the future as the result of the State's actions concerning the name of the creek without observing the statutory requirements*

to change its name.”

I do not believe Butte is receiving the quality cleanup and restoration Butte is guaranteed and is entitled to under Superfund/State Law and the Montana Constitution!

Here are my reasons for that concern;

- **The proper cleanup and restoration in Butte is not just about Butte. It's about the entire Clark Fork and Columbia River Basins. Whatever happens in Butte is going to resonate up and down the Basins!**
- **The reality is Butte has not been cleaned properly. Butte deserves better.**
- **It is wrong to not create a clean and restored meandering Silver Bow Creek from Texas Avenue to Montana Street, where the children can play and fish and the adults of the community can enjoy the amenities of the cleanup as well.**
- **Butte deserves the best cleanup possible and not the cheapest as is now being proposed by the agencies---Using the best technology available with current and accurate data.**
- **We need a ROD and Consent Decree that is not “etched in stone”! One that provides for contingences that may develop as the process continues.**
- **We should absolutely not be using restoration dollars for remediation as we are doing with the Parrot Tailings Area! We are not asking Missoula to use the restoration settlement monies from the Clark Fork River Settlement Restoration dollars to do remediation cleanup in Missoula. Still \$30+ Million in their account.**
- **It is wrong to create a waiver to decrease water quality standards of the Creek!**
- **There is absolutely no question under Superfund and State Laws and the Montana Constitution that the Atlantic Richfield Company now British Petroleum Company is totally responsible for the cleanup. They made the decision to close the Butte Mines, to close the Anaconda Smelter, to close the Berkeley Pit, shut off the underground pumps in the Kelley Mine that caused the Berkeley Pit and Butte mine flooding, and finally they closed the East Continental Pit that ended mining in Butte as was known for 100 years.**
- **I believe it is totally wrong for Arco/BP to be taken off the hook for the cleanup of the portion of the Silver Bow Creek Corridor from the Headwaters at the Parrot Tailings area at Texas Avenue to Casey Street.**
- **I believe it is totally wrong that we as a community are now being told if we do not accept the inferior cleanup and restoration now being proposed by the agencies and Arco/BP that we are going to get a worse inferior cleanup, by using Unilateral Orders.**
- **The contaminated groundwater plume from the Parrot Plume that is flowing under homes in Butte and under a Housing Facility where elderly retirees and disabled residents live in the Columbus Plaza must be addressed.**
- **The Berkeley Pit and the Montana Pole Site need to be responsibly addressed---The Pole Plant cleanup is a frigging disaster and must be addressed!**
- **Remember---The Superfund decisions made today are forever decisions and have forever consequences!**

We need a comprehensive plan. Including:

- **A Solid financial commitment addressing total cleanup and restoration**
- **Total removal of all tailings---Parrot, Diggings East and Northside Tailings, Blacktail Berm and remaining Silver Bow Creek contaminants.**
- **Creating a quality meandering Creek flowing through the town**
- **Responsibly addressing the inefficient French Drain and Storm Sewer issue.**
- **Addressing the cleanup on the Hill that was basically completed under what EPA calls Time Critical Removal and not proper science.**
- **Retention Ponds, of as I call them mosquito or Zika Ponds, should not be used a means of capturing storm water. Strom water should be diverted and pumped to the Berkeley Pit for treatment before discharge to the Creek.**
- **Using the Restore Our Creek Vision Statement as guide to complete the cleanup and restoration. As I and others have always promoted, restoration and remediation can and should take place simultaneously.**
- **Montana Constitution---Section 3. Water rights. Article IX Section 3 of the Montana Constitution States---"All waters within the boundaries of the State are the property of the State, held in trust, for the use of its people."**
Section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment...
Section 2. Reclamation. (1) All lands disturbed by the taking of natural resources shall be reclaimed.

In the final analysis if we do not have a quality clean and restored Silver Bow Creek flowing through Butte where children can play and fish and the adults of the community can enjoy the amenities of a responsible cleanup and restoration as well, along with addressing the Berkeley Pit, Butte Hill and Montana Pole Site, then we have all failed. That includes me!

Fritz

From: [John McKee](#)
To: [Natural Resource Damage Program](#)
Cc: [Bill Callaghan](#); [david williams](#); [Emmett Riordan](#); [Helen Joyce](#); [Okrusch, Chad](#); [Ryan Lynch](#); [Mary Jo McDonald](#)
Subject: Proposed NRD Plan Amendments
Date: Monday, August 19, 2019 10:47:41 AM

Good morning,

Please see below as my official public comment on the Proposed NDRP Plan Amendments:

- A • The Parrot needs to come out.
- B • The plan as proposed will basically remove the remainder of the restoration monies from the BNRC.
- C • If one discounts the \$10M to the Water Plant and \$10M to the Parrot thus far, fully 2/3 of all monies in BNRC have (in my opinion) been used for non-restoration activities.
 - To suggest that we move the vast remainder of BNRC monies to another non-restoration project puts us in a position of having expended nearly \$30M on non-restoration activities.
 - We will never see money like this again to do the work that still needs to be done.
- D • Please find alternative sources from the AC Reserve fund to make the Parrot removal work and allow BNRC monies to remain for true restoration projects in the future.

Best,

John McKee
Owner/Distiller
Headframe Spirits, Inc.
406.498.5045 (c)
www.headframestill.com
Drink in the Spirit of Butte

From: [William Callaghan](#)
To: [Natural Resource Damage Program](#)
Cc: [john@headframespirits.com](#); [toko.dave@gmail.com](#); [emmettoriordan@gmail.com](#);
[helen.oconnor.joyce@gmail.com](#); [COKrusch@mtech.edu](#); [lynchryan@gmail.com](#); [mjomcd@gmail.com](#);
[eerickson@waterenvtech.com](#)
Subject: Fwd: Proposed NRDP Plan Amendments
Date: Monday, August 19, 2019 1:07:42 PM

A

I totally concur with John's comments. Instead of stating the same thing again I am submitting those comments. Further more, I am totally opposed to spending one more penny of BNRC monies on any more remedial tasks. Use the aquatic and terrestrial reserves to pay for it. The future is now. Finish the headwaters clean up or we will end up with a hell of a lot more headaches in the future. We should have done the same thing with Milltown.

Bill Callaghan - BNRC

BC

Begin forwarded message:

From: John McKee <john@headframespirits.com>
Date: August 19, 2019 at 10:47:34 AM MDT
To: nrdp@mt.gov
Cc: Bill Callaghan <bhbill9@yahoo.com>, david williams <toko.dave@gmail.com>, Emmett Riordan <emmettoriordan@gmail.com>, Helen Joyce <helen.oconnor.joyce@gmail.com>, "Okrusch, Chad" <COKrusch@mtech.edu>, Ryan Lynch <lynchryan@gmail.com>, Mary Jo McDonald <mjomcd@gmail.com>
Subject: Proposed NRDP Plan Amendments

Good morning,

Please see below as my official public comment on the Proposed NDRP Plan Amendments:

- The Parrot needs to come out.
- The plan as proposed will basically remove the remainder of the restoration monies from the BNRC.
- If one discounts the \$10M to the Water Plant and \$10M to the Parrot thus far, fully 2/3 of all monies in BNRC have (in my opinion) been used for non-restoration activities.
- To suggest that we move the vast remainder of BNRC monies to another non-restoration project puts us in a position of having expended nearly \$30M on non-restoration activities.
- We will never see money like this again to do the work that still needs to be done.
- Please find alternative sources from the AC Reserve fund to make the Parrot removal work and allow BNRC monies to remain for true restoration projects in the future.

Best,

John McKee
Owner/Distiller
Headframe Spirits, Inc.
406.498.5045 (c)
www.headframestill.com
Drink in the Spirit of Butte

From: [Al Beavis](#)
To: [Natural Resource Damage Program](#)
Subject: Comments on Parrot Tailings
Date: Monday, August 19, 2019 1:49:03 PM
Attachments: [Mt. Restoration Plan for Parrot.odt](#)

Montana Natual Resource Damage Program
P.o.Box 201425
Helena.Mt. 59620 1425

A

I am sending a comment in regard to the Parrot Tailings Cleanup! First off I was against it in the beginning and remain so as I type! The people who are spearheading the project have no knowledge what so ever of what may lay ahead if it is allowed to proceed. For example: What history do they have about the past active mining that went on here. Have they ever worked in the underground or open pit mining associated with this area? Do they understand the ground structures , veins, faults, water and the overlay of alluvium before making contact with bedrock? What about the water courses from the East that make their way from the Continental Divide? How much water is making it's way through the old underground workings that are numerous in this area. Look at the old maps and see for yourself! Are you familiar with the old Pittsmont mining and smelter area? It lays North East of the Parrot and boasted a slag pile much larger than the Reduction Works on South Montana Street. It was covered over with discard material by Montana Resource sometime around the year 2000 or later. This area was never open pit mined because of the alluvium depth and the huge amount of water it contained. In the 1980's it could be viewed from Continental drive road. Is this water making it's way to and thru the Parrot Tailings, good question, I believe that it is mainly because it lays in direct line with it and S.B. Creek! After traveling thru the old smelter and tailings of the Pittsmont which are similar to those of the Parrot. If this is so why bother with the parrot until this is checked for Copper sulphate. This is what is wrong with the Superfund instead of starting at one end or the other they have always started some where else and worked their way to the Ends and never getting there so have accomplished very little for a vast sum of money! There are a vast amount of old workings in and around and under MR's open pit ,two to mention is the Mayweather and the Altuna with lots of water and both are acidic. Is this water making it's way underground to S.B. Creek, good question. There is a lot of water in this area that also comes from the East off the foothills of the Rocky mountains. The mountains in this area are badly fractured and contain many faults, one being the Continental fault that is known for its abundance of water in the underground workings associated with this area. Where are the creeks at that ran from the East Mnt. ridge to S. B. Creek before MR.started mining,another good question left unanswered! The hugh discard dumps from the MR. pit that are viewed from Continental drive have to contain low grade material, there is no such thing as not containing small amounts of copper and other metals in the discard dumps of past mining in Butte.

Back in the years prior to open pit mining in Butte the underground mine water was pumped to surface thru the High Ore Mine located off the Anaconda road. It was then sent down the hill North of Meaderville into what was known as the copper tanks more like Flumes where it was precipitated using all kinds of metals for the acid water to work it's way over and deposit it's copper and the old miners would work to keep the

film brushed off so the process could keep working. The water was then discharged into what is known as Yankee Doodle stream at around 5500 gal/min. It made up the most of the flow of the stream. After it left the gulch it became known as the Silver Bow creek. The most popular name at that time because of the color was known as S- -t creek. There was no aquatic life whatever from here past the Colorado tailings and on its way to Clark Fork! The country from the headwaters has changed a lot and so has the creek channel due to mining. This can readily be seen along the old material laying like a flood plain from East to West along its entire length way past the Colorado tailings and Rucker.

From: [Emmett Riordan](#)
To: [Natural Resource Damage Program](#)
Subject: 2019 Restoration Plan Amendments
Date: Monday, August 19, 2019 10:13:41 PM
Attachments: [Butte Area One Meeting 8-5-19.pdf](#)
[ATT00001.htm](#)

My name is Emmett Riordan and I am a member of the Butte Natural Resources Damage Council. I would like to submit the following comments;

- A The Parrot tailings project needs to be completed, funding should not be taken from the
- B BNRC waste cap or stream reveg funds. BNRC was not developed to provide funding for remedy, rather for restoration. \$10 million has already been committed for the Parrot from these funds. Given the broad scope of dollars available in the Upper Clark fork Basin, funding should be acquired elsewhere rather than depleting the last of the restoration funds available and not completing the original vision and purpose of the BNRC. The attached Butte Area
- C One meeting notes are also submitted as public comment.

Thank you

•

Flugge, Meranda

From: Bob Worley <bworley30@yahoo.com>
Sent: Tuesday, August 20, 2019 12:49 PM
To: Natural Resource Damage Program
Subject: 2019 Restoration Plan Amendments

COMMENT #11

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: 2019 Parrot Amendments

A I have attended several meetings about the remediation of Silver Bow creek and the Parrot Tailings along with the rest of the restoration of the Butte mine waste site. It was my impression that our governor, Steve Bullock had the monies located to do the Parrot tailings cleanup. It is now my understanding that the cleanup people want to use restoration money to do remediation. This does not make sense to me as there would be little or no funding to complete restoration. The responsible parties in the cleanup should be held accountable and fund the additional money necessary to give Butte citizens the cleanup it deserves.

We are being short changed. It seems everything relocating shops, Parrot clean up, storm water and Silver Bow creek keep getting shorted in funding. Let's have a free flowing Silver Bow creek from Texas Ave. to Montana St. and a greenway such as is shown in the Butte Silver Bow courthouse rotunda. Butte deserves this and more.

B I am a resident of Butte all my life and also is my wife. With my children and grand children that are living and working in Butte, we have a five(5) generation existence in this town and valley. Give us the cleanup we deserve and need to call Butte home. Thanks for allowing us to comment on this important issue and accepting my comments.

Cordially
Bob Worley

B

Bob and Chris Worley
3405 Wharton St.
Butte, Mt. 59701

**UPPER CLARK FORK RIVER BASIN
ADVISORY COUNCIL**

**BUTTE NATURAL RESOURCE DAMAGE
RESTORATION COUNCIL**

UCFRB AC Members:

Bill Rossbach, Chair
Maureen Connor, Vice-Chair
Kay Eccleston
Jim Kambich
Jon Krutar
Mick Ringsak
Jim Davison
Susan Peterson
Shaun McGrath, Director
Dept. of Environmental Quality
Martha Williams, Director Dept. of Fish, Wildlife and
Parks
John Tubbs, Director Dept. of Natural Resources and
Conservation
Ronald Trahan, Chairman Confederated Salish &
Kootenai Tribes
Jacqueline Lavelle, U.S. Dept of Interior

BNRC Members:

Elizabeth Erickson, Chair
Bill Callaghan
Helen Joyce
Ryan Lynch
Mary Jo McDonald
John McKee
Chad Okrusch
Emmett Riordan
Dave Williams

August 20, 2019

Governor Steve Bullock
State Capitol
PO Box 200801
Helena MT 59620-0801

Re: Parrot Tailings

Governor Bullock:

At the August 5, 2019, joint meeting of the Upper Clark Fork River Basin Advisory Council and the Butte Natural Resource Damage Council, NRDP staff provided us with detailed information about the proposal to amend our restoration plans to provide the funds needed to complete remediation of the Parrot tailings.

At the conclusion of the meeting, members of both councils in attendance requested that we file a short written comment of the broad consensus of the councils, attaching the transcript minutes of the meeting as additional formal comments.

A First, there is no doubt or dispute that we have to amend the plans to provide the money that is needed at this critical juncture. The transcript record of the meeting proves this. Doug Martin said:

... the Parrot is the largest source of contamination to the Butte alluvial aquifer. We've known that, and the State has pounded their fists on the table for a very long time on that issue. We also know that the contaminated groundwater, alluvial groundwater, is discharging into Blacktail Creek and Silver Bow Creek, further contaminating those surface water areas. Tr. 11

Doug emphasized the importance of removal of the contaminants because the groundwater concentrations are “extremely elevated,” many times surface and drinking water standards. Harley Harris described the Parrot tailings as “probably the single most or primary loader to groundwater” at the headwaters of the watershed. Tr. 30. Jim Ford spoke from his scientific perspective and reiterated that although there were other important sources of contamination in the watershed, those were being addressed as remediation, with remediation dollars. The Parrot is “the primary loader to groundwater and groundwater discharge into the creek that *was not being addressed under remediation.*” Tr. 31.

Second, most of the current members of both councils have dedicated 10 years and collectively thousands of hours to developing comprehensive plans and programs to make the most effective use of, and maximize the value of, the restoration dollars that you have been entrusted with. We have known from the beginning that, although we are fortunate that we have significant sums to help restore the lost and damaged resources of the headwaters and upper reaches of the Upper Clark Fork Watershed, those restoration dollars are limited and precious and not enough to do all that should be done.

We have all known from the beginning of our tenure 10 years ago that we were handicapped by the disputed designation of some of the most damaged and dangerous areas as “restoration” not “remediation” and therefore not the financial responsibility of ARCO. Despite these handicaps, we have been able to develop comprehensive plans for your consideration and approval to make the best use of these limited funds to restore the watershed. We are grateful for the great progress that has been made. However, you will see from the attached transcript minutes that every member of either council that spoke

B

expressed frustration that some of these precious and limited restoration dollars unquestionably have to be used for the critical remediation of the Parrot Tailings. It goes without saying that when the contaminants in the alluvial groundwater at the critical headwaters of the watershed are “extremely elevated” many many times in excess of surface and drinking water standards, this has to be addressed as remediation, not restoration. See attached chart of Parrot groundwater data.

We appreciate that you and the DEQ and NRDP staff share our frustrations about this. We applaud your efforts and the efforts of the DEQ and NRDP staffs to keep doing all you can to obtain additional remediation funds for this, and, if possible, replace the restoration dollars we will have to use for this.

We applaud your efforts to ensure that this work is done on your watch. We all agree that the most critical component now is to remediate the damage that has been done and provide that safest and healthiest water at the headwaters of the watershed.

B/C We have no choice. It has to be done. We all understand and appreciate the importance of making the proposed amendments to provide the additional funds, but we remain frustrated by the recalcitrance of the EPA and ARCO in recognizing the proper designation of this problem as remediation and refusing to hold ARCO liable for the funds to clean this primary loader of contaminants into the watershed.

D Please accept these as the comments of our councils, along with the attached transcript minutes. Thank you for all your and your staff's efforts. We appreciate your consideration.

Sincerely,

Bill Rossbach
Chair, UPCFRBAC

Elizabeth Erickson
BNRDC

cc. Harley Harris, NRDP
Doug Martin, NRDP
Jenny Chambers, DEQ

From: [Johnson, Susan - NRCS-CD, Deer Lodge, MT](#)
To: [Natural Resource Damage Program](#)
Subject: 2019 Restoration Plan Amendments
Date: Wednesday, August 21, 2019 2:32:31 PM
Attachments: [Scanned from a Xerox Multifunction Printer.pdf](#)

COMMENT #13

Thank You,

Susie Johnson
Deer Lodge Valley/North Powell Conservation District
District Administrator
406-415-4043
Susie.johnson@mt.nacdnet.net

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

1002 Hollenback Road, Suite C
Deer Lodge, MT 59722
406-846-1703 X 111
www.mt-wrc.org



Dear Governor Bullock,

The Watershed Restoration Coalition appreciates the opportunity to comment on the proposed 2019 Restoration Plan Amendment. We do find it extremely hard to comment, when as an organization we do not have the full story on the negotiations going on behind closed doors

Having said that we must oppose the proposed amendment. We do not believe there is adequate guarantee that any funds used will be returned to the funding sources which they came. The WRC sees no reason for this amendment must be enacted prior to the signing of a

Consent Decree. We believe that there should be additional assessments to identify other courses of action to address the issue of the Parrot Tailings before taking funds from other restoration efforts.

From the information provided to date it is obvious that the initial costs estimate for phase one lacked sufficient data required to make a realistic budget estimate. By NRDP's own admission it is obvious that there is even less data available to adequately estimate the additional costs to be incurred for the next phase. Therefore, the WRC believes we are setting the stage for another transfer of funds request in addition to this one when the budget estimates again prove to be wrong.

From presentations conducted to support this amendment it appears that the desire of Butte Silver Bow to move the County shops is driving this amendment effort. The WRC see no reason for the need to move forward on removal of the shops until additional assessment can be made to seek other potential courses of action to address the Parrot Tailings issue.

We believe that this amendment is setting the stage to rob funds restoration efforts in the Upper Clark Fork when it is clear to everyone that we lack sufficient restoration funds to address currently identified restoration needs.

Sincerely Yours,

John Hollenback
Chairman

Watershed Restoration Coalition of the Upper Clark Fork

From: [Carl Hamming](#)
To: [Natural Resource Damage Program](#)
Subject: 2019 Restoration Plan Amendments
Date: Wednesday, August 21, 2019 3:44:49 PM
Attachments: [PowellCounty_NRDP_Parrot_CommentLetter_Aug2019.pdf](#)

COMMENT #14

Good Afternoon,
Please see the attached letter for a comment letter from Powell County.
Thank you for the opportunity to comment.
Best,

Carl Hamming
Powell County Planner
409 Missouri Ave. – Suite 114
Deer Lodge, MT 59722
Phone: 406.846.9729



Planning Department

Powell County Planning Department • 409 Missouri Ave., Suite 114 •
Deer Lodge, Montana 59722 • 406.846.9795 • chamming@powellcountymt.gov

August 20, 2019

Dear Natural Resource Damage Program,

Thank you for the opportunity to submit comments regarding the proposed funding allocation for the parrot tailings removal in Butte. Powell County commends the Natural Resource Damage Program (NRDP) for their commitment to remove the tailings and protect the remediation and restoration work completed on Silver Bow Creek and the Upper Clark Fork River. However, the County does have concerns regarding the proposed funding amendments.

- B First, it is frustrating to observe restoration dollars being utilized on remediation work. Given the expenditure, there is a lost opportunity for effective restoration work to be completed elsewhere in the watershed. Ideally, Butte and the State of Montana are able to persuade the EPA to hold the appropriate parties accountable for removal. However, it is likely that this ship has sailed down the Clark Fork River and onto the Columbia with no anticipated return.

- C A particular challenge of composing this comment letter is that the Consent Decree negotiations are ongoing behind closed doors. The proposed Funding Amendment has non-binding language that “if a BPSOU Consent Decree is reached...the State anticipates there should be surplus funds from the settlement for additional restoration projects within the Butte site.” This soft language is not reassuring. Remediation work is rarely completed under budget (obvious exception being Silver Bow Creek) and if the Blacktail Creek and confluence area work utilizes the entire settlement fund, all three funds will suffer lost opportunities.

- D Finally, the proposed funding allocation amendment sets a dangerous precedent. Despite a claim that this does not set a precedent, it is a maneuver that is irreversible. Enabling this amendment to be executed will jeopardize the geographic restrictions attached to all other restoration funds. Due to the number of potential projects to be completed within the uplands habitat and waterways of Powell County, this causes us great concern.

- E Powell County is under the impression that the NRDP was tasked to complete the Parrot Tailings removal with insufficient funding, an enormous challenge. The effort began before adequate funding was secured and allocated. We do not understand the current urgency of the proposal by the NRDP. The update to the Upper Clark Fork River Restoration Plan took roughly two years, but yet, the public involvement process for this proposal has a duration of less than a month. Would it behoove Butte Silver Bow and the NRDP to wait until further data collection and site characterization is completed this fall to obtain a better understanding of projected removal costs? Numerous Council members voiced their frustration that the State is recommending this plan without their approval, we do not understand why this proposal is bypassing the approved processes of enabling the Advisory Council and the Butte Natural Resource Council to vote on the matter.

We do appreciate the opportunity to comment on the proposal and look forward to continuing to work with the NRDP to improve the upper Clark Fork River watershed. Thank you for your consideration.

Sincerely,



Carl Hamming
Powell County Planning Director
406.846.9729
charnming@powellcountymt.gov
Suite 114 - County Courthouse
409 Missouri Ave.
Deer Lodge, MT 59722



Ralph E. Mannix Jr.
Powell County Commissioner
Presiding Officer
406.846.9788
Suite 201 - County Courthouse
409 Missouri Ave.
Deer Lodge, MT 59722

From: jgriffin.redmountain@gmail.com
To: [Natural Resource Damage Program](#); [Martin, Douglas](#); [Bullock, Governor](#)
Cc: [Susan Dunlap](#); ["David McCumber"](#); [John DeArment](#); [Alex Leone](#); [Maureen Conner](#); maryp@cskt.org; ["Casey Hackathorn"](#); toko.dave@gmail.com; ["Bill Macgregor"](#); [Reed, Daryl](#); [Bartkowiak, Brian](#); [Nikia Greene](#); ["Elizabeth Erickson"](#); [Bill Rossbach](#); [Holmes, Patrick](#); [Joe Griffin](#)
Subject: Comments on Proposal to Reallocate NRD Funds for Parrot
Date: Thursday, August 22, 2019 9:48:17 AM
Attachments: [Parrot fund allocation comments jhq.pdf](#)

COMMENT #15

CAUTION: This email message may contain an unsafe attachment.

We scan email attachments for malicious software to protect your computer and the State's network. If we determine that an attachment is unsafe, then we block it and you will only see an attachment called 'Unsupported File Types Alert.txt'. If we cannot scan an attachment, then we provide this warning that the attachment may be unsafe and advise you to verify the sender before opening the attachment. If you don't see a file attached to this message, it doesn't mean that we blocked it, some email signatures contain image files that we cannot scan.

Please contact your agency IT staff for more information.

My comments as follows and as attached.

August 21, 2019

To: Governor Steve Bullock and Montana Natural Resource Damage Program Staff

From: Joe Griffin, Montana Department of Environmental Quality, retired

RE: Reallocating NRD restoration funds to pay for removing Parrot Tailings will undermine restoration downstream

As a hydrogeologist, and as DEQ's project officer for Butte Priority Soils Operable Unit from 2004 until 2015, I played a major role in shaping the State's understanding of the Parrot Tailings and the groundwater contamination plume that it has created, and the State's position on removing that source of extreme groundwater contamination. I believe that Governor Steve Bullock, as the trustee of NRD funds, made a wise and monumental decision to remove the tailings using state funds. It helped break the logjam in consent decree negotiations and got Butte Superfund back on track. But the hastily announced proposal to take a large portion of funding earmarked for stream restoration from Butte to Deer Lodge seems poorly vetted and out of balance with a watershed approach. At this juncture, with EPA's Proposed Plan promising additional groundwater

A

management, the prudent course of action would be to delay building new shops and moving forward with phase 2 of the Parrot excavation. Building new shops is by far the single biggest expense in the Parrot project.

In light of the fact that the NRD Parrot plan does not remove all of the tailings and waste - a large area of tailings, overlain by active railroad, will be capped rather than excavated - it would be best to consider additional capping plus capturing and treating Parrot groundwater as a cost-effective alternative. In past technical discussions, EPA, ARCO and DEQ considered capturing that groundwater and routing it to the Berkeley Pit. That alternative has the added benefit of moving the groundwater divide to the southwest, thereby sending all the Parrot Plume to the Pit. The divide separates alluvial groundwater that is captured by the Berkeley Pit from groundwater flowing

B toward Silver Bow Creek. Although that alternative is no longer part of EPA's proposed remedy, it would be a far more cost-effective means of controlling the plume. NRD and the Trustee should seriously consider that alternative before moving forward.

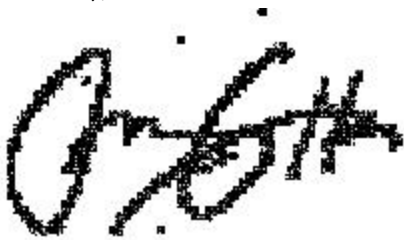
D After years of my own analysis of both groundwater and surface-water data, I believe that the risk from the Parrot groundwater plume has been generally overstated. Currently, groundwater from the Butte Reduction Works is having the greatest impact on water quality in Silver Bow Creek. EPA's Proposed Plan addresses that source of contamination, but also recognizes and addresses the minor impact that groundwater contamination from the MSD corridor is having on Blacktail Creek. There is little outside of what is currently proposed by EPA that will significantly reduce copper concentrations in Silver Bow Creek in the foreseeable future.

C After decades of planning by NRD and the Advisory Council to address the health of the entire upper watershed, the current reallocation proposal appears hasty and the focus is too narrow. I request that NRD and the Trustee refocus on what is needed to restore a healthy fishery in Silver Bow Creek and the upper Clark Fork over the long term.

I offer Silver Bow Creek in the Streamside Tailings Operable Unit as a specific example of the future need for restoration funding. Remedy is essentially complete, but FWP biologists believe that the fishery is far from restored. There is a clear need to plant willows and shrubs in the riparian zone of Silver Bow Creek in Subarea 4. Those plantings would provide shade and help develop fish habitat. Will funding be available in the future?

C I urge NRD and the Trustee to take the long view and a watershed approach as they consider how to allocate funding.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joe Griffin', with a stylized flourish at the end.

Joe Griffin, DEQ retired
CTEC Vice President
Clark Fork Coalition Technical Advisory Board

Joe Griffin
Retired Superfund Project Manager, MT DEQ
406 560-6060

The intuitive mind is a sacred gift and the rational mind is a faithful servant. We have created a society that honors the servant and has forgotten the gift. — Albert Einstein

From: [Michael Garrity](#)
To: [Natural Resource Damage Program](#)
Subject: 2019 Restoration Plan Amendment
Date: Thursday, August 22, 2019 11:53:03 AM

COMMENT #16

August 22, 2019

NRDP
1720 Ninth Ave.
Helena, MT 59620-1425

To whom it may concern;

Please accept these comments from me on behalf of the Alliance for the Wild Rockies on the new plan to move \$18.5 million from various restoration pots to finish the removal of the Parrot tailings behind the Butte Civic Center.

A We believe Atlantic Richfield Company is required by the Superfund law to pay for the cleanup of the Parrot tailings behind the Butte Civic Center.

A MT DEQ and NRD should not sign any Consent Decree unless the Parrot Tailings and the cleanup and restoration of Silver Bow Creek and its Corridor from Texas Ave to Montana Street is cleaned and remediated using remedy dollars provided by the Atlantic Richfield/British Petroleum Company as is guaranteed under Superfund and State Laws and the Montana Constitution.

Sincerely yours,

Mike Garrity
Executive Director
Alliance for the Wild Rockies
P.O. Box 505
Helena, MT 59624

From: [William McDowell](#)
To: [Natural Resource Damage Program](#)
Subject: 2019 Restoration Plan Amendments
Date: Thursday, August 22, 2019 12:41:27 PM

COMMENT #17

A NRDP; As a resident of the watershed, I use the Upper Clark Fork river from Warm Springs to Drummond frequently for recreation (floating, fishing, duck hunting). The proposal to take \$12.7 million of money from the Upper Clark Fork River Restoration Plan and use it to do remediation at Parrot Tailings is a bad idea. Restoration funds are desperately needed for their original purpose "to replace and restore lost natural resources"--not to clean up contamination in urban Butte. The UCF Restoration Plan dollars are allocated in an ambitious, but well-crafted restoration plan, worked out over years by many stakeholders, to restore the river, the tributaries and the upland areas, particularly fish and wildlife habitat.

B To use a substantial portion of those funds for remediation of contamination in urban Butte is to redirect funds away from their intended purpose towards a problem whose dimensions are not well understood. Cost over-runs at Parrot Tailings will happen. We do not know the final cost. The remediation of the Butte Hill is necessary, but it should be done using remediation funds from ARCO-BP, not restoration funds. ARCO-BP is the responsible party.

A This is a bad idea, which sets a bad precedent. This proposal threatens to undermine the very credibility of the State's restoration planning process, and the Plan's commitments to stakeholders throughout the UCF Basin. The Governor should act to secure the necessary remediation dollars for the whole Parrot cleanup from the responsible parties, not robbing Peter to pay Paul as a stopgap measure.

Thank you.....

Will McDowell
4660 Spurgin Road
Missoula, MT 59804

From: [Roy Morris](#)
To: [Natural Resource Damage Program](#)
Subject: 2019 Restoration Plan Amendments
Date: Thursday, August 22, 2019 1:38:57 PM
Attachments: [PastedGraphic-1.tiff](#)
[ATT00001.htm](#)
[GGTU restoration comment 8-22-19.pdf](#)
[ATT00002.htm](#)

COMMENT #18

Please accept the attached letter as comments for the 2019 Restoration Plan Amendments

Roy Morris
Director
George Grant TU
PO Box 563
Butte, MT 59703
president@ggtu.org
406-491-4255



George Grant TU
PO Box 563
Butte, MT 59703
Cold Clean Fishable Water

August 22, 2019

2019 Restoration Plan Amendments

NRDP
1720 Ninth Ave.
Helena, MT 59620-1425

To Whom It May Concern,

The George Grant Chapter of Trout Unlimited (GGTU), headquartered in Butte, MT, represents over 500 conservation minded anglers throughout SW Montana. Over the past 20 years, GGTU has been involved in several Superfund related restoration projects on the east and west side of the divide and we have seen the on-the-ground benefits of those efforts firsthand. Silver Bow Creek is now a viable fishery for the first time in well over a century, with over 25 miles of Creek restored. German Gulch is a functioning native trout factory, protected from the invasion of non-native trout. Several fishing access sites have been improved and the State has opened miles of the Clark Fork River to public access, above the high water mark, in perpetuity. These actions have collectively made a monumental shift in the access to recreational fishing opportunities near Butte.

- B Despite all of the restoration successes, there is still much work to do. Fish numbers remain low in Silver Bow Creek and are in drastic decline in the upper Clark Fork. Although work has started on Blacktail Creek, there are miles of creek requiring restoration work. The Basin Creek Reservoir project will provide an amazing opportunity to access a pristine environment on Butte's doorstep, but challenges remain in managing public access in a way that will protect the resource. All of these future actions will be funded through restoration settlement coffers.
- B Restoration dollars are precious, and there is never enough funding to complete the work that is necessary to rehabilitate our damaged waterways. We understand the risk that the Parrot Tailings contamination poses to the restored Silver Bow Creek drainage and we, as a group of interested and engaged participants
- A appreciate that the Parrot Tailings site is being actively remediated. While remediation is obviously the first step in restoration, we're deeply concerned that using funds earmarked for restoration are being used for remediation. Remediation without complete restoration would fall far short of the spirit, intent and promise of the Superfund Cleanup of the Silver Creek and Upper Clark Fork corridor. While we don't want to disrupt full remediation, we urge the state to completely fund critical restoration projects going forward. The promise
- B has been made to restore the resources that have been lost to the citizens of Montana for the last 110 years due to mining activities. We hope and expect that promise to fully restore those resources of clean, cold, fishable waters, healthy riparian zones and adjacent properties be kept.

Respectfully,

Roy Morris
Past President
George Grant Chapter of Trout Unlimited

From: [Karen Knudsen](#)
To: [Natural Resource Damage Program](#)
Subject: 2019 Restoration Plan Amendments
Date: Thursday, August 22, 2019 1:49:45 PM
Attachments: [CFC_NRDP_CommentLetter 8.22.19.pdf](#)

COMMENT #19

Please find attached the Clark Fork Coalition's comments on the proposed 2019 Restoration Plan Amendments.

Thank you for your consideration.

Best –

Karen

—

Karen Knudsen
Executive Director, [Clark Fork Coalition](#)

PO Box 7593, Missoula, MT 59807 // 406.542.0539 x203
karen@clarkfork.org // clarkfork.org



August 22, 2019

Natural Resource Damage Program
1720 9th Avenue
Helena, MT 59620-1425

Submitted via email to nrdp@mt.gov

RE: 2019 Restoration Plan Amendments

Dear Mr. Martin,

Thank you for the opportunity to comment on the proposed funding allocations to the Parrot Tailings Waste Removal Fund.

The Clark Fork Coalition (CFC) has been engaged in Clark Fork Superfund processes for more than 30 years. We have long supported the removal of the Parrot Tailings as a necessary step in the comprehensive clean-up of Butte, Silver Bow Creek, and the entire Upper Clark Fork Basin, and we commend the State for its commitment to removing the tailings in a timely manner. However, we have a number of concerns about the proposed Plan Amendments:

- A • First and foremost, removal of the Parrot Tailings is remediation, not restoration. The restoration funds in the Butte Groundwater Fund, the BAO Fund, and the UCRB Reserves that are the subject of the proposed transfer are critically important to the projects to which they are currently dedicated. If the Parrot Tailings must be removed, then the financial burden for doing so should fall to the responsible party, not the citizens of Montana. As you know, restoration funds were secured through a hard-fought battle to compensate the people of Montana for the lost value of our natural resources. The forfeiture of these restoration funds to cover remediation of the Parrot Tailings thus – in our view – amounts to an indirect subsidy of the responsible party by the people of Montana. This is an unacceptable outcome. We urge the State to do everything in its power to secure an additional sum of remediation dollars dedicated to the removal of the Parrot Tailings.
- C • We are concerned about the timing and pace of Parrot removal under the situation we face today, in which no remediation dollars have been specifically allocated to that removal and negotiations with the responsible party are ongoing. The Parrot is a long-term, chronic issue that certainly needs to be addressed; it is not an acutely dangerous problem that needs to be solved immediately, regardless of the cost. If the State is ultimately unsuccessful in securing dedicated remediation funds for the Parrot, the opportunity costs of the proposed fund transfer should be evaluated through a publicly vetted
- D

PO Box 7593
Missoula, MT
59807

T: 406.542.0539
F: 406.542.5632

www.clarkfork.org

- E prioritization process that weighs the benefits of Parrot removal against the costs of all that will go undone elsewhere to pay for it. Though we strongly support removal of the Parrot, it is not clear that it would necessarily rise to the top of the priority list under this scenario, and it is possible that we would have to accept a capture and treatment system as the best of the affordable alternatives.
- F
- Claims to the contrary in the Plan Amendment notwithstanding, the proposed fund transfer will indeed set a precedent, or at the very least an expectation, that clean up dollars are fungible, and can be moved between Restoration and Remediation, across operable units, and between projects. We are concerned about the impact this will have on the integrity of the public involvement and science-driven restoration planning process that we view as critical to the long-term success of ongoing clean-up efforts throughout the basin.
 - Finally, we are concerned that the zero-sum implications of the proposed fund transfer, where a dollar more for one project means a dollar less for another, are already pitting one group against another: Butte against Missoula, Silver Bow County against Powell County, the Parrot against the Upper Clark Fork. We saw it at the public meeting at the Butte archives, and we'll see it in the written comments. We are all Montanans, and those of us who live in the Clark Fork Basin are united by the river that flows through it, from its headwaters in Butte, through the Deer Lodge Valley, downstream to Missoula and beyond. We strongly urge the State to support a more unified and collaborative climate by securing the additional funding necessary for Parrot from the responsible party.
- B

Thank you for the opportunity to comment and for NRDP's continued work to ensure the best possible future for the Upper Clark Fork's water resources and the people, fish, and wildlife they sustain.

Sincerely,



Karen Knudsen
Executive Director

From: [Adam Shaw](#)
To: [Natural Resource Damage Program](#)
Subject: 2019 Restoration Plan Amendments
Date: Thursday, August 22, 2019 2:30:50 PM

COMMENT #20

Dear NRD,

I am writing on behalf of Hellgate Hunters & Anglers, a western Montana hunting and fishing conservation organization representing nearly 500 sportsmen and women in Montana. We specifically request that the Upper Clark Fork River Basin Restoration Fund be protected, without transfer of funds to the Parrot Tailings Waste Removal Project. HHA recognizes the importance of the Parrot Project but believes such transfer of funds will reduce the opportunity to fully restore the Upper Clark Fork river, its fishery, and surrounding wildlife.

B If any funds are transferred to the Parrot Project, such funds should be repaid to the Upper Clark Fork River Basin Restoration Fund.

Sincerely,

Adam Shaw

President
Hellgate Hunters & Anglers

From: [Greg Munther](#)
To: [Natural Resource Damage Program](#)
Subject: 2019 Restoration Plan amendments
Date: Thursday, August 22, 2019 2:34:40 PM

COMMENT #21

A It is extremely important not to divert funds from the original intent of the Upper Clark Fork River Restoration Fund for other uses.

A As a retired Forest Service fisheries biologist who at one time worked in the upper Clark Fork drainage (Deerlodge National Forest) I witnessed the tremendous potential of the upper Clark Fork if streamside pollutants could be removed. Progress is being made but still a long ways from reaching its potential as a productive trout stream. Such Restoration will enhance the desirability of the upper Clark Fork residents as well as attract new businesses to the valley.

I encourage responsible officials to not dilute the necessary work to restore this stream and its tributaries.

Greg Munther
gmunther12@gmail.com
1295 Lena Lane
Missoula MT 59804

From: [Clayton Elliott](#)
To: [Natural Resource Damage Program](#)
Subject: 2019 Restoration Plan Amendments
Date: Thursday, August 22, 2019 2:42:31 PM

COMMENT #22

To Whom It May Concern:

Thank you for the opportunity to comment on the 2019 Restoration Plan Amendments as it relates to the remediation work on the Parrot Tailings and the associated fund transfer from restoration accounts through out the basin. I represent Montana Trout Unlimited as their Conservation and Government Relations Director, and on behalf of our more than 5,000 members and 13 chapters wish to offer our support for protecting, to the extent possible, the Upper Clark Fork River Basin Restoration Plans and associated Fund. We understand the nature of the situation requiring the diversion of \$18.5 million into the continued remediation of the Parrot Tailings in Butte. While we are not thrilled that those dollars are coming out of restoration dollars rather than remedy, we understand that the complete remediation of the tailings in the Parrot are necessary to the long term health of Silver Bow and Blacktail Creeks and thereby the entire Clark Fork. We are concerned though that some have suggested that even more of those dollars come from the Upper Clark Fork Basin Restoration Fund than initially proposed. We ask that you protect the integrity of that fund to the extent possible. We know that the overall transfer is highly likely, but we believe that the unfair allegations the the Upper Clark Fork Basin Restoration Fund take a more significant hit than the other funds is unjust. Any unnecessary burden on this fund jeopardizes the opportunity to fully restore the Upper Clark Fork River, its fishery, and surrounding wildlife habitat.

We remain optimistic and will hold the state to its word that the resulting funds associated with an ultimate consent decree in Butte will fully repay any funds taken for the Parrot project back into the restoration funds to restore the Upper Clark Fork River Basin. These funds are essential to the years of work ahead of us. Thank you for the opportunity to comment on this proposal. Please do not hesitate to contact me with any questions or follow up that may be necessary.

Clayton Elliott
Conservation and Government Affairs Director
Montana Trout Unlimited
clayton@montanatu.org
o: 406-543-0054
c: 307-272-6298
www.montanatu.org



From: [krystal weilage](#)
To: [Natural Resource Damage Program](#)
Subject: 2019 Restoration Plan Amendments
Date: Thursday, August 22, 2019 2:57:03 PM

COMMENT #23

A

The Parrot Tailings need to be removed and I totally support that goal. I do not support using restoration money for remediation purposes. There needs to be money (from BP-Arco) set aside to deal with unforeseen environmental damages. Industry took 100 years to damage Butte's landscape, why shouldn't they be on the hook for 100 years of remediation and restoration? I know the money must come from somewhere, and since no one can force BP-Arco to do the right thing, I guess the money will have to come from restoration. There is barely enough money, it seems like, to do the Parrot Tailings, so what

B

will happen when the caps fail or they find another contaminated area or any other problem nobody has discovered? Restoration in Butte is IMPORTANT, but the way money is being depleted from restoration coffers, so it can't be that important since there is no guarantee that the lost money will ever be returned. There really isn't enough money to take care of Butte in perpetuity. The EPA should speak for the people of Butte and stop being the lapdog of industry. Thank you for your time.

Krystal Weilage

From: [Casey Hackathorn](#)
To: [Natural Resource Damage Program](#)
Subject: 2019 Restoration Plan Amendments
Date: Thursday, August 22, 2019 3:55:55 PM
Attachments: [TU Comments on NRDP Parrot Tailings Ammendments.pdf](#)

COMMENT #24

Please find our attached comments on the Plan amendments for the Parrot.

Thanks,
Casey



Casey Hackathorn / Upper Clark Fork Program Manager
chackathorn@tu.org / (406) 546-5680

Trout Unlimited
312 N. Higgins Ave, Suite 200
Missoula, MT 59802
<http://www.tu.org>



August 22, 2019

Montana Natural Resource Damage Program
Doug Martin, Restoration Program Chief
1720 9th Ave
Helena, MT 59620

RE: Proposed NRDP Restoration Plan Amendments to Fund Parrot Tailings Removal

Dear Mr. Martin,

In response to the Trustee's proposal to transfer \$18.5M from UCFRB and BAO Restoration Funds to pay for the remainder of the Parrot Tailings Waste Removal Project, Trout Unlimited offers the following comments:

- A

 - Trout Unlimited has fully supported the lengthy, challenging, and methodical public process that went into developing the Restoration Plans and their updates including the most recent revision completed just this year. The Plans focus the use of NRD funding from Butte through the entire watershed to maximize their intended restoration benefits and safeguard them through the long-term restoration process. Plan revisions outside of the established process should not be taken lightly. While the Trustee asserts that these fund transfers are not precedent setting, the limited public process for this decision is concerning and may open the door for future revisions that deplete these limited resources.
- B

 - Trout Unlimited fully supports the Parrot Tailings removal along with the removal of other mine wastes that contribute to groundwater contamination and threaten surface water quality in the Silver Bow Creek headwaters. Meaningful restoration of Blacktail Creek and Silver Bow Creek cannot occur without effective remediation of these contaminants.
- B

 - While TU commends the State for taking action in the face of stalled consent decree negotiations, these tailings removal projects are clearly remedial actions that should be funded under remedy. We understand that the Parrot Tailings are not included in EPA's 2019 Proposed Plan, but still contend that the cost of the Parrot project should be included in the final BPSOU settlement.
- The proposed fund transfers will deplete resources needed for restoration. Restoration needs for Blacktail Creek, Silver Bow Creek, and the Upper Clark Fork already exceed the

remaining settlement funding. The funds currently held in the UCFRB Reserve are not “excess funds”—we fully anticipate that future project work needed to bring these damaged natural resources back to an acceptable condition will exceed the available funding. For every dollar lost from these funds, there will be a commensurate loss in restored streams, habitat, fisheries and wildlife in the Upper Clark Fork Basin.

C

- If the Trustee transfers funds as proposed, TU supports the proposed division of expenditures between the Butte Groundwater Restoration Fund, the BAO Fund, and the UCRB Reserves. TU also supports repaying these funds in the same proportions if they can be recovered under a future settlement. That approach would honor the community work invested in developing the Restoration Plans and provide the best opportunity for restoration success through the entire injured area.

D

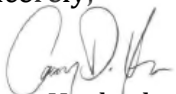
- TU urges the State to ensure that any funds transferred will be repaid to the maximum extent possible while continuing to seek full funding for an effective remedy on the Butte Hill. It is challenging to offer meaningful comment on the possibility of reimbursement from a future settlement while the negotiations continue behind closed doors. If these decisions were delayed until after the consent decree is settled and the extent of the remaining Parrot work is better understood, it would be easier to offer feedback on the financial implications of the transfers and the restoration trade-offs being proposed.

B

A

Thank you for the opportunity to comment and for your continued effort to restore the Clark Fork River Basin.

Sincerely,



Casey Hackathorn
Upper Clark Fork Program Manager

From: [Kathy Hadley](#)
To: [Natural Resource Damage Program](#)
Subject: 2019 Restoration Plan Amendments"
Date: Thursday, August 22, 2019 4:08:19 PM
Attachments: [Comment letter on the Parrot Tailings Hadley.docx](#)

Dear NRDP,

Attached are my comments on the Parrot Tailings Waste Removal Project Funding Amendments.

Thank you for the opportunity to comment.

Kathy Hadley

August 22, 2019

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

Re: 2019 Restoration Plan Amendments

I appreciate the opportunity to comment on the 2019 Restoration Plan Amendments. The Montana Natural Resources Damage Program (NRDP) is proposing to transfer a total of \$18.5 million from three different restoration funds the NRDP oversees to fund further remediation work on the Parrot Tailings. The transfers include taking \$8 million from the Upper Clark Fork River Basin Restoration Plan Reserves, \$5.8 million from the Butte Area One Restoration fund and \$4.7 million from the Upper Clark Fork River Basin Restoration Fund/Butte Groundwater Restoration.

A I support the removal of the Parrot tailings. Butte should not have a massive pile of toxic mine tailings in the city, polluting the surrounding areas and endangering public health. However, I strongly object to the proposed NRDP fund transfers to accomplish this goal. Removal of the Parrot Tailings is clearly Superfund related cleanup work. It is a remediation action to protect human health and the environment and it should be paid for by the responsible party, BP/ARCO. NRDP funds have always been used for restoration work after cleanup has been completed. The NRDP funds are intended to be used to return natural resources (fish, wildlife, surface and groundwater, soil and vegetation) back to healthy conditions after the toxic mine tailings have been removed under Superfund cleanup actions.

B I also particularly object to taking funds from the Upper Clark Fork River reserves for this work. The Clark Fork river cleanup has been substantially slowed down over the last few years because the state has concerns that they have insufficient funds to complete the basic cleanup. This is itself extremely disturbing. We have been waiting a very, very long time to have the toxic mine tailings removed from the mainstem river corridor. We know that NRDP funds will be absolutely critical to restoring the river ecosystem to a fully functioning condition once the remediation work is completed. To transfer funds out of the river restoration accounts for the Parrot tailing removal is just pitting one area of contamination against another area of contamination. Not Fair.

A I wish the state would search for another source of funds for the Parrot tailings removal work. It is my belief that this work falls directly under Superfund and should be paid for by BP/ARCO who is the responsible party in this case.

Thank you,

Kathy Hadley
11155 Eastside Rd
Deer Lodge, MT 59722

From: [Evan Barrett](#)
To: [Natural Resource Damage Program](#)
Subject: "2019 Restoration Plan Amendments"
Date: Thursday, August 22, 2019 4:42:49 PM

To: Governor Steve Bullock and Montana Natural Resource Damage (NRD) Program Staff

From: Evan Barrett, Butte, retired

RE: Reallocating NRD restoration funds to pay for removing Parrot Tailings will undermine restoration downstream

The Montana Natural Resource Damage Program, on behalf of the Trustee of the State's natural resources, the Governor, is proposing a series of restoration plan amendments to transfer up to \$4.7 million from the Upper Clark Fork River Basin Restoration Fund/Butte Groundwater Restoration; \$5.8 million from the Butte Area One Restoration Fund; and \$8 million from the Upper Clark Fork River Basin Restoration Plan Reserves to fund the remainder of the Butte Area One Restoration Plan Amendment – Parrot Tailings Waste Removal Project.

As Executive Director of the Butte Local Development Corporation and subsequently as head of the Governor's Office of Economic Development and additionally as an active member of Project Green and the Restore Our Creek Coalition and also as an active citizen, I have been deeply involved since their inception with the Natural Resource Damage (NRD) program, its structure and the various permutations of the Upper Clark Fork River Basin Advisory Council (UCFBAC) as well as the creation of the Butte Natural Resource Damage Council (BNRC).

The "restoration" function under CERCLA is critically important to the long-term economic viability of Butte, Anaconda and the Clark Fork Valley, over and above the remedial activity conducted under CERCLA by the Environmental Protection Agency (EPA) with BP/ARCO as the major PRP. The precious available restoration funds are less than what is needed to accomplish a first class restoration, especially in Butte. Using restoration funds where remedy funds are appropriate is foolhardy. The decisions and agreements about the Parrot Tailings made between ARCO and Butte-Silver Bow (BSB) over a decade ago (with the support of EPA) eliminated "remedy" dollars from use on the tailings. The Governor was forced to use "borrowed" NRD to take on the task of Parrot Tailings cleanup.

At that time the UCFBAC requested that the restoration funds be considered a "loan" to be replenished by "remedy" dollars that should more appropriately be used on the Parrot. Now comes time when finishing the Parrot Tailings removal and cleanup require additional funding and the state is again forced to again use "restoration" money. Again, there is the hope that it may be replenished with leftover remedy dollars, but no guarantee.

You, as Governor, are in a tough spot between the "rock" of ARCO intransigence on

using remedy dollars on the Parrot and the “hard spot” of limited restoration funds being depleted for what is a remedy purpose.

A

The reality of the cleanup of the Parrot has become quite clear: the tailings are the worst water/tailings problem in Butte -- the dirtiest on the Hill. Decisions made a decade ago based upon presumptions are now in direct conflict with the environmental facts that have been revealed during the actual digging in the Parrot. ARCO and BSB should agree to cancel the old agreements in favor of ARCO providing remedy money for the full Parrot Tailings project, both Phase 1 and Phase 2. EPA should facilitate that and work diligently to get it accomplished. Unravelling previous agreements may be complex, but much in this world is complex, yet deserves to be tackled and conquered. All parties should commit themselves to that end.

As Governor, your role is essentially supportive or catalytic, but you should be firm about the need to get this done, both privately and publically and extend all needed efforts.

We all should look at the Parrot Removal with restoration dollars like a construction loan on a house, later to be paid off with the real loan money in the deal, the mortgage funds. The construction loan (restoration funds) is not a permanent obligation, it just helps cash flow the project on the front end while permanent funding is being put together, after which it is taken out. Let's make sure that our front-end loaded construction loan using restoration dollars does not become a permanent loan. Please do all that you can through the remaining negotiation processes (outside of NRD) to protect the precious restoration funds for long-term permanent use for restoration activities in the Silver Bow Creek corridor west of Texas Avenue.

B

So, I agree to the use of the NRD restoration funds for Parrot Phase 2, but only if, before the funds are used, there can be put in place a firm agreement to repay those funds and also the restoration funds used on Phase 1. The request to you is to diligently pursue that objective. We will support you all the way in that effort and will approach ARCO, BSB and EPA in that regard.

Governor, you have been a champion in moving things forward on the Parrot and on properly developing the Silver Bow Creek corridor. We will stand with you as you seek to continue to get this done in a way that protects the limited restoration funds so they can be used for their proper purposes, not for remedy that should be the responsibility of ARCO, and the Parrot is just such a case.

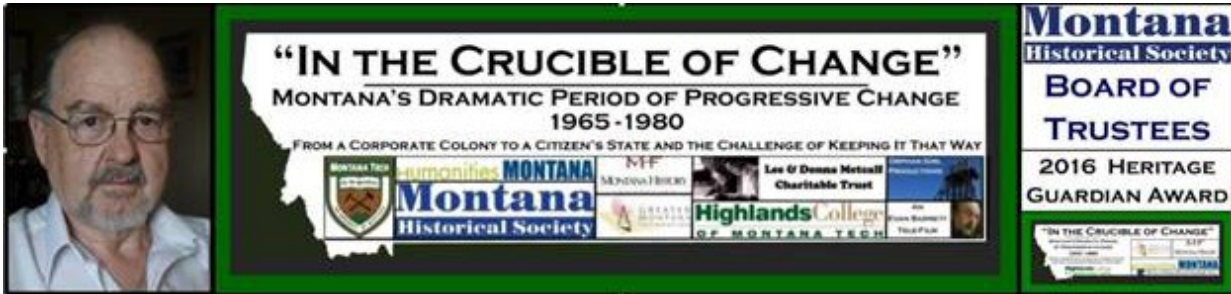
Thanks.

Tap 'er light!



Evan Barrett, who lives in historic Uptown Butte, retired several years ago after 47 years at the top level of Montana government, politics, economic development and education. He is an award-winning producer of Montana history

films who continues to assist with community development, write columns and record commentaries, and occasionally teach Montana history.



Evan Barrett, 807 West Silver – Butte, MT 59701
Home Phone: 406-782-4671 – Personal Cell: 406-490-4349
Personal Email: evanbutte@bresnan.net

From: [Martin, Douglas](#)
To: [Natural Resource Damage Program](#)
Subject: FW: Comments on Parrot Tailings proposal
Date: Thursday, August 22, 2019 4:51:50 PM
Attachments: [BFarlingCommentsonParrot8-19.pdf](#)
[image001.png](#)

COMMENT #27

Doug Martin
NRDP/DOJ
P.O.Box 201425
Helena, MT 59620-1425

Office 406/444-0234
Cell 406/465-1131



From: Bruce Farling <brucefarling@gmail.com>
Sent: Thursday, August 22, 2019 4:48 PM
To: Martin, Douglas <dougmartin@mt.gov>
Subject: Comments on Parrot Tailings proposal

Doug,

See attached.

I hope you are well.

Bruce Farling

Bruce Farling
232 West Sussex
Missoula, MT 59801
brucefarling@gmail.com

22 August 2019

Doug Martin, Chief
Restoration Program
Montana Natural Resources Damages Program
State of Montana
1720 9th Avenue
Helena, MT 59620

Dear Doug:

I recently heard that the Natural Resource Damage Program is proposing to transfer \$18.5 million from the Upper Clark Fork River Basin (UCFRB) and BAO restoration funds into remedial actions for removing the Parrot Tailings and associated nearby wastes. Though I support removal of these materials from the Parrot Tailings corridor, I think it's inappropriate to transfer funds from the UCFRB restoration fund reserves.

Technically, these are not "reserves" in the sense that they are rainy day funds without a specific purpose. They represent needed funding to complete adequate restoration of Silver Bow Creek, Blacktail Creek and the upper Clark Fork River Corridor. As was discussed some years back in the development of the restoration plans for the upper Clark Fork River basin, reserve funds would be saved money meant to be stewarded for covering shortcomings in individual UCRB projects, as well for covering reasonably anticipated restoration and monitoring costs necessary for preserving existing restoration investments in and along these stream reaches.

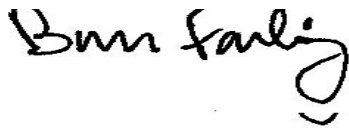
I do appreciate that the NRD program is trying to move expeditiously to remove the significant groundwater pollution sources in the Parrot Tailings Corridor. However, it is clear this is first and foremost a remedial action and more appropriately addressed in the current though stalled negotiations that will settle liability for the Butte Priority Soils Operable Unit (BPSO). The consent decree for the BPSO is the most appropriate mechanism for funding the Parrot Tailings challenge. Both the State and EPA have heard this loudly from many sources.

If the Trustee still insists on using restoration dollars for this remedial action, I suggest it be crafted as a loan, with resources to be divided equally among the UCRB "reserves," Butte Groundwater Restoration Funds (the most appropriate

lending source) and the BAO fund (also more appropriate than the UCFRP reserves.) The loan should be paid off through funds eventually recovered in the consent decree for the BPSO. This is not dissimilar to how the State of Montana funded the original damage assessments and litigation that eventually led to recovery of restoration funding from settlement of the Clark Fork NRD claim. At that time, with no other ready source available the money was borrowed from Montana's Coal Trusts, which was eventually made whole through settlement.

Thanks for your attention to this. And please keep me posted on the State's thinking and decision.

Sincerely,

A handwritten signature in black ink that reads "Bruce Farling". The signature is written in a cursive, flowing style with a large, stylized "B" and "F".

Bruce Farling

From: [Sesso, Jon](#)
To: [Harris, Harley](#); [Natural Resource Damage Program](#)
Cc: [Crain, Julia](#); [Sesso, Jon](#)
Subject: BSB Comments on NRDP Proposed Amendments
Date: Thursday, August 22, 2019 5:08:34 PM
Attachments: [BSB Comments on NRDP Amendments for Parrot Project FINAL 8-22-19.docx](#)

COMMENT #28

Harley,

Sending document again with a more descriptive document name. Same document. No changes.

Thanks. Jon

Messages and attachments sent to or from this email account pertaining to the City-County of Butte-Silver Bow business may be considered public or private records depending on the message content (Article II Section 9, Montana Constitution; 2-6 MCA).



MEMO

August 22, 2019

TO: Harley Harris, Natural Resource Damage Program

FROM: Jon Sesso, Butte-Silver Bow

CC: Dave Palmer, BSB Chief Executive
BSB TRC/E – BSB Superfund Staff

RE: **Comments on NRDP's Proposed Restoration Plan Amendments to Complete the Parrot Project**

Butte-Silver Bow staff have reviewed NRDP's proposed Restoration Plan Amendments associated with funding the completion of the Parrot Project. Butte-Silver Bow submits the following comments for your consideration.

- A 1. Butte Silver Bow (BSB) supports NRDP's intentions of proposing the series of amendments to current restoration plans for the Upper Clark Fork River watershed, i.e., to ensure adequate funds are set aside and available to complete the Parrot Tailings Project. It is important to move forward with the Parrot Project, which is a critical component in the broader cleanup actions ongoing and planned in Butte. Moving forward with the Parrot Project is also important in terms of demonstrating the value of integrating remedial and restoration work in the Silver Bow Creek corridor – an approach that has been very successful throughout the Upper Clark Fork River watershed.
- D 2. BSB recognizes the need for the proposed restoration plan amendments now, while negotiations on the Butte Priority Soils remedy continue and further details are made known. As was stated at the August 5 public meeting, the State (and BSB) anticipate some of the funds transferred to the Parrot Project as a result of the proposed amendments will be reimbursed to the respective accounts using proceeds from a potential settlement between the State and Atlantic Richfield (as part of the Priority Soils Consent Decree). With reimbursement as the goal and subject to Comment #3 (below), BSB supports the three proposed amendments.
3. The narrative description and the flowchart that accompanies the three proposed amendments indicate that the State is proposing a hierarchy of how the funds would be



expended on the Parrot Project. Each dollar expended would be split on a percentage basis among the three funds based on the total allocated from each source, i.e., the Streamside Tailings Remediation Excess Funds (\$8 million), followed by the Butte Area One funds (\$5.8 million) and Groundwater funds (\$4.7 million). Butte-Silver Bow would respectfully ask the NRDP to consider expending all Streamside Tailings Remediation Excess Funds first, and then tap the other two accounts on a proportional basis, as needed.

B

More importantly, regarding any reimbursement of funds (from the potential settlement under a Priority Soils Consent Decree), BSB would ask NRDP to give priority to the BAO Fund and Groundwater Fund. Specifically, the BAO fund be made whole first, so as many restoration priorities as possible can be pursued under the BAO Restoration Plan. Second for reimbursement would be the Groundwater Fund, which would allow additional projects (as outlined in the Butte Groundwater Restoration and Replacement Plan) to improve the Butte drinking water system. Once and if these two accounts are made whole, then any additional funds available for reimbursement could go back to the Streamside Remediation Excess account.

C

The basis for proposing this revised reimbursement strategy is better alignment of the return flow of funds with the restoration priorities in the Upper Clark Fork headwaters area and the location where the natural resource damages occurred. Further, the Streamside Tailings Remediation Excess Funds would appear to be the best fit to complete the Parrot Project and are already earmarked for projects in the headwaters area in the Upper Clark Fork Restoration Plan.

E

Thank you for your consideration of these comments.

From: [Richard Tretheway](#)
To: [Natural Resource Damage Program](#)
Subject: 2019 Restoration Plan Amendments
Date: Thursday, August 22, 2019 5:14:07 PM

COMMENT #29

My name is Northey Tretheway and I am a retired professional engineer who is a member of Butte's Project Green and Restore Our Creek Coalition, an organization seeking the restoration of Silver Bow Creek. As you know, the Parrot tailings are a big component in the puzzle to get a restored Silver Bow Creek.

I would like to thank Governor Bullock for taking the initiative to remove the Parrot tailings from behind the Civic Center. Without his leadership and foresight, Butte would be left with a waste of contamination for the foreseeable future. A waste that was much worse than our community was lead to believe. Thank you.

A However, the cost of cleaning the Parrot should not come at the expense of having proper restoration funds for the community of Butte. Butte, unfortunately, is at the tail end of all the cleanup that has taken place along the Upper Clark Fork and including Milltown in Missoula. It has made little sense to all of us from Butte that the cleanup did not start and complete at the head end of the damage in Butte before completing all areas west of our community. Now, because we are last to the remediation table, you are asking us to reach into our valuable restoration dollars for clean up actions. It really doesn't make sense.

B We should not be taking more restoration dollars from the Butte Area One fund, even after already using one-third of the fund on the Parrot removal. That leaves the fund fully underfunded. No more funds should come from the Butte Area One fund, and further, if the funds are to repaid back, the use "reserve funds" from the Upper Clark Fork aquatic and terrestrial pots to fund the work.

Again, thank you Governor and all your NRD group for all you have done for Butte. Please take the steps to do a bit more for our community.

Northey Tretheway
3448 Wharton
Butte, MT 59701

From: [Elizabeth Erickson](#)
To: [Natural Resource Damage Program](#)
Cc: [Bill Callaghan](#); [david williams](#); [Emmett O Riordan](#); [Helen O'Connor Joyce](#); [John McKee](#); [Okrusch, Chad](#); [Ryan Lynch](#); [Sister Mary Jo MacDonald](#)
Subject: NRD Restoration Plan Amendments
Date: Thursday, August 22, 2019 5:40:17 PM
Attachments: [Governor Steve Bullock.pdf](#)

Please accept the attached document as my official comments to the proposed NRD Restoration Plan Amendments.

Thank you,

Elizabeth Erickson
BNRC Chair

Governor Steve Bullock
State Capital
PO Box 200801
Helena, MT 59620-0801

Re: NRD Restoration Plan Amendments

Governor Bullock,

Thank you for the opportunity to comment on the proposed amendments to the Butte Natural Resource Damage Restoration Council (BNRC) and Upper Clark Fork River Basin Advisory Council (UCFRB AC) Restoration Plans. Both councils have spent a lot of time in the development of these plans and take any changes to the plans seriously as shown by our response to the proposed changes.

A First and foremost, I would like to re-iterate that Phase 2 of the Parrot Tailings Removal **MUST BE COMPLETED** and I admire your tenacity in getting this done. Phase 1 of the removal would not have been completed, if you had not used your influence to make that happen. The removal benefits water quality in all of the Clark Fork River Basin

Because of its location at the uppermost end of the basin, the impact of the Parrot tailings to groundwater and surface water quality is even more detrimental than originally thought, with metals concentration that exceed even those in the Berkeley Pit. EPA's decision to not require removal of the source of these contaminants under remedy, continues to affect the upper basin and un-do all the cleanup work that has been completed. It is for this reason and the fact that the removal would not have happened any other way, that the BNRC decided, and memorialized in our 2012 plan, that \$10 million of our scarce restoration dollars should be used as a cost share in the removal. This decision has continued to be controversial in the basin, but I believe was the best option for getting the removal done and requiring other entities to step up and pay their fair share.

B That being said, enough money from the Butte Area One (BAO) Fund has been spent on the Parrot, more than 1/3 of our original \$28M. The additional funding that is proposed to come from BAO, should come from one of the UCFRB funds. They have much more funding than BAO and some of the funding is even set aside as "reserve funds". The BAO fund has already been allocated to funding categories and is needed for restoration after the remediation in the corridor is done. I would encourage you to look carefully at the UCFRB Reserve Funds and consider using these instead. Allocating more money from BAO, essentially guts the fund and may prevent us from doing badly needed restoration work in Butte.

Thank you in advance for your consideration of these comments.

Sincerely,



Elizabeth Erickson
BNRC Chair

From: [Mary Kay Craig](#)
To: [Natural Resource Damage Program](#)
Subject: 2019 Restoration Plan Amendments
Date: Thursday, August 22, 2019 9:40:23 PM
Attachments: [2019-22-19 NRDP Amendments comments of mkcraig.docx](#)

COMMENT #31

Dear NRDP folks,

Attached are my formal comments for your public comment deadline today, August 22, 2019. Please be free to call or email me if you have any questions.

Thank you very much
Mary Kay Craig

--

Mary Kay Craig
518 W. Granite St.
Butte, MT 59701
406 723-3851
marykathleencraig@gmail.com

August 22, 2019

To Whom It May Concern,
Montana Department of Justice
Natural Resource Damages Program
Helena, MT 59601

Subject: 2019 Restoration Plan Amendments

Thank you for the good work that uncovered the Parrot Tailings complex of toxins, and for the opportunity to comment on shifting of restoration funds. I've attended NRDP or BNRC meetings in the Butte area since the early 1990s, so I'm a stakeholder who knows I have given volunteer time and expenses toward the final outcomes. My family also contributed to the work of NRD when brother Michael Craig, CPA, researched what the Atlantic Richfield Company was holding in reserves for potential environmental liabilities. At that time in the early years of the MT NRD Program, the amount the State planned to sue the PRP for resource damages was under \$10,000! When I brought Michael's data forward to you, the dollars rightfully increased to cover additional damages and kept on increasing. The Craig family is sad to see those hard-won restoration dollars being used for remedy which is the responsibility of BP-ARCO. If only ARCO had started the cleanup at the source of pollution, we might have seen the Parrot area remediated by now. We were advocates for the removal of the highly toxic Parrot tailings and plume and are happy to see those removals being done now, even though a BP-AR responsibility under remedy.

We aren't allowed in the negotiations you will have, so can only pass along some thoughts that might be helpful to you. **We believe the restoration dollars being used for remedy MUST come back to Butte for its restoration**, plus additional dollars to do it right. The following provides the logic for MT NRDP to insist that Butte area resources need be valued #1 for dollars so to bring it up to the "clean and healthy environment" required by the 1972 MT Constitution:

- Scientists say, and with 28 years involvement in issues of the nation's largest Superfund site, **I agree, that the Parrot pollution is more toxic than any of the pollutions from Butte to Missoula - even worse than the Berkeley Pit. Because of that peak pollution designation, it deserves to be ranked highest in priority for cleanup and restoration.**
- The backward timing for remedy; i.e., **starting downstream rather than at the source of the pollution, means Butte's highly contaminated Silver Bow Creek corridor has not received the attention it should have had upfront when dollars were being allocated. Thus it did not get a timely cleanup with adequate funds.**
- Decades have gone by since the Butte area was designated a Superfund site. That's over 35 years that my hometown has lived under the specter of a "dirty town," an "unhealthy town," with "dirty water." These terms have smothered the ability of the Butte area to achieve any kind of comparable growth to nearby towns like Bozeman, Missoula, and Helena. It is not fair that children in every town in Montana have clean streams in which to recreate, while generations of Butte children have had to live by dead, unfishable, unswimmable waters with contaminants of concern blowing around town, swirling around our youngsters, and under their feet. Butte's future generations

deserve better than the "if come" promise of LEFTOVER restoration dollars that depend on negotiations with BP-ARCO.

- A MAJOR concern, and another reason that Butte deserves to get extra consideration in your natural resource repair dollars: Poverty. In 2017 there were 27.2% of youngsters grades one through four in Butte who lived below the Federal Poverty Level. In all of Butte that year, 18.9% of all citizens lived below that poverty line. Uptown Butte shows up on the US EPA's Environmental Justice Screen in red. That indicates some of the very poorest people in the nation live here. EPA created a department of Environmental Justice to address the fact that the poor in the nation live in the most polluted places in the nation. I asked in your public meeting and reiterate now, **"Does the Montana DEQ or DOJ have any comparable responsibility to Environmental Justice communities such as Butte?" In what way are low-income neighborhoods given the specific assurance from the State of Montana that they, too, deserve the "clean and healthful environment" our Montana Constitution guarantees? Please keep poor children in Butte in mind as you negotiate with BP-AR for the dollars needed to restore Silver Bow Creek from its present headwaters at Texas Avenue through its corridor to Montana Street.**

- D** We pray for you to recapture the NRD dollars being used for remedy, but because these "end-of-the-road" dollars are not enough to do the restoration that will give Butte kids a Silver Bow Creek restored in town, we ask for MORE, so that kids on the Butte Hill can access a real, meandering Silver Bow Creek a few blocks from their homes. We citizens, the real stakeholders, aren't allowed in secret negotiations on any of the crucial work that will affect Butte people in perpetuity. So please stand tall for Butte in the negotiations that will bring some restoration settlement dollars back to the state. We want you to cry out for fairness in those negotiations.

Sincerely,

s/ Mary Kay Craig

--

Mary Kay Craig
518 W. Granite St.
Butte, MT 59701
406 723-3851
marykathleencraig@gmail.com

From: [Pal, Robert](#)
To: [Natural Resource Damage Program](#)
Subject: Comment on the proposed Butte Area One Restoration Plan Amendment
Date: Thursday, August 22, 2019 11:58:24 PM

COMMENT #32

To whom it may concern,

A

I do not agree with the proposed Butte Area One Restoration Plan Amendment, because restoration dollars need to be used in restoration strictly. If we use them for remedy we may take away the prospective future of restoration in our region. I feel Butte should be known of its world class restoration projects in the future, taking away those funds will ruin that beautiful picture.

Thank you,

Robert Pal

ROBERT PAL

Assoc. Prof., Director of Restoration



Biological Sciences
1300 West Park St
Butte, Montana 59701
EMAIL: rpal@mtech.edu
OFFICE PHONE: [\(406\) 496-4725](tel:(406)496-4725)
<https://www.mtech.edu/clsp/biology/robert-pal.html>

To the Montana State NRDP,

After attending what seems to be considered a public meeting between the UCRFB Advisory Council and the BNRC that it was a planned meeting that would have a specific outcome. It seems that a public meeting should have been called and facts presented that would have allowed all attending to actually take part in a true discussion without the outcome predicted by the presenters.

The presenters had already made up their minds as to what they expected the outcome would be.

The presentation presented was that restoration money would be taken from reserves under the direction of the UCRFB Advisory Council and the BNRC. Reserves were monies set aside by the Advisory Council for future needs. The monies from the BNRC were monies to be used for immediate needs in Butte.

The plan details that only part of the reserves from the UCRFB funds would be taken to continue the removal of the Parrot tailings to begin when the shops have been removed from the site. The plan would take all the remaining funds designated as restoration funds for Butte. NRD stated that the funds would be replaced IF ARCO replaces the funds at the time the CD is signed. Obviously no guarantee that the replacement funds would ever appear.

Therefore it is obvious that the NRD should fund the further removal of the Parrot tailings with monies held in reserves with no plan for immediate use at this time.

The monies that the BNRC oversees for immediate use in the Butte area one and the upper Silver Bow Creek have already been designed to be used as restoration projects.

The use of restoration monies for remediation taken from the Butte projects for revegetation, tree planting and restoration of Silver Bow Creek are not future projects but they are now.

I recognize that the removal of the Parrot tailings is essential but would make a case for the use of reserves not monies that could be used in Butte and are not simply reserves for the future.

Sincerely,

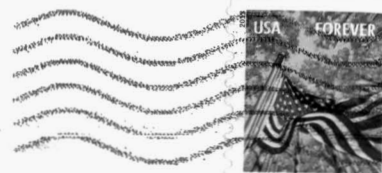
Lu Mary McDonald
Citizen of Butte
BNRC Member

** DFG should release
remedy \$ to finish
the Parrot Tailings
Project*

438 West Porphyry
Butte, MT 59701

BELLINGHAM MT 591

21 AUG 2019 PM 1 T



Mr. Doug Martin - NRD ~~DOJ~~

P.O. Box 201425

1720 9th Ave

Helena, MT 59620

59601X4657



JOINT UPPER CLARK FORK RIVER BASIN

Remediation and Restoration

Advisory Council

and

Butte Natural Resource Damage Council

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

Elizabeth Erickson - Bill Rossbach, Presiding

PUBLIC INFORMATIONAL MEETING

Butte Archives

17 West Quartz Street

Monday, August 5, 2019

1:00 p.m.



NORDHAGEN COURT REPORTING

CANDI NORDHAGEN

1734 Harrison Avenue
Butte, Montana 59701
(406) 494-2083

Registered Professional Reporter
Conference Room
1734 Harrison Avenue

NATURAL RESOURCE DAMAGE PROGRAM:

HARLEY HARRIS

Program Manager/Chief Legal Counsel

State of Montana - NRDP

Montana Department of Justice

P.O Box 201425

Helena, Montana 59620-1425

DOUG MARTIN

Restoration Program Chief

State of Montana - NRDP

Montana Department of Justice

P.O. Box 201425

Helena, Montana 59620-1425

NRDP STAFF:

Brian Berkoviac

Miranda Flugge

Jim Ford

Katherine Hausrath

Greg Mullen

Aleisha Stickney

1 Transcript of Proceedings

2 Monday, August 5, 2019

3 - - -

4 MR. HARRIS: It's a little past one and we
5 want to kind of get this meeting underway and get
6 everybody's questions answered, and so on.

7 Anyway, my name is Harley Harris. I'm the
8 Program Manager for the National Resource Damage Program.

9 Thank you all for coming here today. I'm
10 looking out for the members of the public, but I also want
11 to thank both the BNRC and the Upper Clark Fork Advisory
12 Committee. This is the first time you two have met
13 together since 2016, I believe. I appreciate, No. 1, you
14 all being here and being here on relatively short notice
15 for the important things we have to discuss today.

16 I'm going to just mostly kick the meeting off.
17 I do want to introduce NRDP staff here because some or all
18 of them may be available to answer questions, and then
19 Doug is going to kind of walk through the main part of the
20 presentation.

21 We do intend to do our best at the end of our
22 presentation to address questions. This is an
23 informational meeting, so no decisions will be made as
24 such, but we do want people to feel that we tried to
25 answer their questions to the best extent possible.

Page 3

1 Anyway, just real quick as far as NRDP staff
2 here: Brian Berkoviac, Aleisha Stickney, Katherine
3 Hausrath, Greg Mullen, Jim Ford, Miranda Flugge. We have
4 an ex-staff member here, too, and miss him greatly.

5 With that, I'm going to let Doug, he's got a
6 few process points to make and then he's going to work
7 through this presentation.

8 MR. MARTIN: Thank you, Harley.

9 Yeah, my name is Doug Martin. I'm the Natural
10 Resource or Restoration Program Chief.

11 A few administrative things before we get
12 going. To the Upper Clark Fork Advisory Council, a
13 reminder: If you are interested in re-upping or
14 reapplying for your position on the council, those
15 applications are due to Stacie in the Governor's office by
16 September 1. If you have any questions, please let me
17 know. Send me an email and I can help you through with
18 some of those things.

19 Or anybody from the public, if you are
20 interested in applying for the Upper Clark Fork River
21 Advisory Council, there are positions up for reapplication
22 and you're more than welcome to put in for that. The
23 applications are on the Governor's page under
24 "Committees," I believe, something like that, "Advisory
25 Council and Committees."

1 And I do see one person in the back, Nathan
2 Cook, you are a member of the Advisory Council. You need
3 to come up and take a seat. I know you're trying to hide
4 back there.

5 (Laughter.)

6 MR. HARRIS: One Advisory Council other thing
7 I'd like to mention before we get started is that most of
8 you know that Pat Cunneen, our NRD Project Manager that
9 was located here in Butte for the last ten years, has
10 decided to move on to the County as an engineer with
11 Butte-Silver Bow. He did a lot of work here, he had a lot
12 of projects under his belt. And from the Natural Resource
13 Damage Program's perspective, I wanted to give -- one,
14 we're going to say goodbye to him in the meeting, so we
15 can wait to do the teary goodbye at the end of the
16 meeting.

17 But if you do have projects, we have allocated
18 all of Pat's projects to other project managers within the
19 program that have something to do with -- have had
20 something to do with it. So, for instance, Greg Mullen
21 who worked on the re-veg on the Butte Hill, he's probably
22 done that for the last 27 years, he's taking over Pat's
23 projects with re-veg. Jim Ford is taking over Blacktail
24 Creek and all of the Parrot responsibilities. Alicia
25 Stickney, who helped Pat the last time through the

Page 5

1 small-project grants application is taking over all the
2 small Grants. And Brian Bartkowiak and Beau, I think, are
3 splitting up some of the watersheds. I don't have all of
4 that lined out.

5 But if you do have a project or a contract
6 that was under the BAO that you dealt with Pat and you
7 need to find out, we will be sending out information to
8 all of you in and corresponding with you on that, but if
9 you have a quicker timeline and you want to get back to us
10 sooner, please don't hesitate to give me a call or talk to
11 me after the meeting, and we can coordinate getting you
12 hooked up with the right person.

13 All right. Chad, do you have a quick
14 question?

15 MR. OKRUSCH: Yeah. Is this temporary until
16 we replace Pat?

17 MR. MARTIN: I was going to get to that. So
18 people have been asking, "Are we going to replace Pat?"

19 Well, first of all, you can't replace Pat.
20 There's a position there. We have not decided, the
21 program has not decided on what's going to happen with
22 that position due to we have to look at it from a number
23 of perspectives, and it actually just happened pretty
24 recently here while we had a whole bunch of other stuff on
25 our table, on our plates, so we really haven't had a big

Page 6

1 chance to look at it yet, but we are going to evaluate
2 that, Chad.

3 MR. OKRUSCH: I hope you will take seriously
4 the community's will to have somebody who lives in Butte,
5 Montana, occupy that position.

6 MR. MARTIN: Yeah, that will be one of the
7 considerations, Chad.

8 UNIDENTIFIED SPEAKER: As a point of
9 clarification, the foundational document from BNRC
10 outlines that there shall be.

11 MR. MARTIN: Okay.

12 UNIDENTIFIED SPEAKER: That there will be.

13 MR. MARTIN: One thing I was going to say here
14 is that we do know that there's large council, and so one
15 of the things that Pat has started doing at the BNRC is,
16 because he couldn't keep track of notes - and I heard you,
17 John - but we've got to introduce ourselves before we
18 speak and try and be recognized by the chairman so we're
19 not speaking over each other and that the court reporter
20 can actually get good minutes.

21 But, John, yes, we have looked at all of that
22 and we know where we are with that, so we are going to
23 consider all those things.

24 That was my last little bit. So we are going
25 to run this meeting similar in that Chairmen Elizabeth and

Page 7

1 Bill are going to run the meeting. After the
2 presentation, we'll take on questions from the council and
3 then we'll move to the public.

4 Does anybody have questions before I get
5 started on the presentation?

6 CHAIRMAN ERICKSON: Let me do some guidelines.

7 MR. MARTIN: Sure.

8 CHAIRMAN ERICKSON: So I'm Elizabeth Erickson
9 and Chair of the BNRC Council.

10 Bill and I did a little arm wrestling before
11 this meeting and I won, so I'm going to chair this
12 meeting. I know a lot of you guys have come to BNRC
13 meetings before. We're going to have rules that are
14 pretty much the same as the way we've run our meetings in
15 the past, but I just wanted to make sure everybody kind of
16 knows how we're going to do that.

17 So the NRD staff has asked that we hold our
18 questions until the end of their presentation because
19 there's going to be multiple people answering those
20 questions, so it will just make it easier if you could do
21 that.

22 The other thing is, is we always do questions
23 from the council first, so we'll do that, questions from
24 the council first and then open it to the public. If you
25 could, because of our court reporter here today, if you

1 could stand up and state your name before you ask your
2 question, that would really help her out on her
3 transcript. And then just ask to be recognized by the
4 Chair, and it just keeps it so one person is talking at a
5 time.

6 Other than that, I think we're good and we'll
7 go ahead and get started with the presentation.

8 MR. MARTIN: All right. Thank you, Elizabeth.

9 One point as we move into the presentation, so
10 all of the information that we're going to provide today
11 is available. It was sent out on our website, the NRDP
12 website, so it was posted there. It was also sent out to
13 the mailing list that we have for the Upper Clark Fork
14 River Basin Advisory Council and to the BNRC Council.

15 So if you did not get it, please let us know.
16 We'll make sure you're added to our mailing list, but we
17 do think our mailing list is pretty comprehensive in that
18 regard. We also did post it in all the area newspapers
19 within the basin that we had these amendments out for
20 public comment.

21 One of the things that we did have up here and
22 in the back of your pamphlet was this flow chart. We
23 actually made a big display of it here. If you look at
24 what was sent out, unfortunately, where it says "Mine
25 Waste Area Restoration/Revegetation," it says "Upper

1 Silver Bow Creek Corridor." That was a mistake in what we
2 sent out. It should have been the mine waste. We have it
3 correctly stated in the addendum, in the amendment to the
4 BAO plan. It was incorrect on the flow sheet at the end.

5 So with that, I'll get started. I am going to
6 talk about all three restoration plans and their
7 associated amendments. First, I am going to talk a little
8 bit about why we're here, and that's the Parrot Project.

9 For those of you who went on the tour at 11
10 o'clock, we were standing right down here in this area
11 right behind the Civic Center. Where the ball field here
12 is, this is the Phase 1 area. That's the area that we
13 looked at where the excavation was.

14 And as a reminder, in 2016, there was an
15 amendment to the Butte Area One Restoration Plan that was
16 reviewed by the public and the councils, and approved by
17 the Governor to adopt the removal of the Parrot tailings
18 waste as a project as part of the BAO restoration plan.

19 The goals of that plan, basically, as Jim
20 talked about a lot while we were out in the field, is to
21 the protect Silver Bow Creek and Blacktail Creek and those
22 aquatic resources from the contaminated groundwater that
23 would be discharging into those creeks, to eliminate known
24 sources of inorganic contamination to the alluvial aquifer
25 and the surface water in that area, and to enhance Silver

1 Bow Creek's and Blacktail Creek's north riparian
2 corridors. Those are the main goals of the Parrot removal
3 project.

4 Why does the State want to remove these? It
5 has been known for quite some time that the Parrot is the
6 largest source of contamination to the Butte alluvial
7 aquifer. We've known that, and the State has pounded
8 their fists on the table for a very long time on that
9 issue. We also know that the contaminated groundwater,
10 alluvial groundwater, is discharging into Blacktail Creek
11 and Silver Bow Creek, further contaminating those surface
12 water areas. One of the other main reasons and that
13 Harley talked about, you know, the Governor wants to get
14 cleanup going in Butte, so the Governor is very strongly
15 behind this project.

16 Jim mentioned in the field that one of the
17 reasons that the Parrot is such an important project for
18 the State and the removal of those contaminants to protect
19 the groundwater is the groundwater concentrations at the
20 Parrot relative to surface water standards and drinking
21 water standards. As you can see from this table, the
22 Parrot groundwater or the groundwater beneath the Parrot
23 is extremely elevated over those standards.

24 There are two phases, two main phases to the
25 Parrot Project. Phase 1 has, for the most part, been

1 completed. The tailings have been excavated and slag has
2 been removed, and some of that slag has been put into an
3 area where it's going to start with the engineered cap.
4 The tailings were taken to Montana Resources for disposal.

5 Phase 2 of the project, which is on the south
6 side of Civic Center Road, is the next phase, and that
7 phase is part of where Butte has to remove their county
8 shops so you can actually get to the tailings that are
9 buried beneath the surface much like in Phase 1, where in
10 Phase 1, it was just below ball fields so there were no
11 structures that needed to be removed.

12 In Phase 1, almost 400,000 cubic yards was
13 moved during that phase: A little over 100,000 cubic
14 yards of overburden, about 100,000 cubic yards of slag,
15 and 170,000 yards of contaminated waste. And that
16 contaminated waste was taken to Montana Resources and
17 disposed of.

18 All the soils were removed per the quality
19 assurance plan that was developed by the State. And the
20 removal went down, basically, to the maximum extent that
21 it could before reaching groundwater. So the tailings,
22 the black clays, and some of the alluvium were removed
23 that had high concentrations of contaminants.

24 Here is a picture of a cross section of the
25 excavation. The overburden is above the top of the line.

1 The Parrot tailings themselves are in between the two blue
2 lines. And then the -- well, that's -- I'm not sure
3 where it is.

4 Where's the slag, Jim?

5 MR. FORD: There is none in that picture.

6 MR. MARTIN: Okay. So there is no slag, okay.
7 And, then, the black organic material is the black at the
8 bottom of the excavation. This is where the highest
9 concentrations were located, which isn't surprising
10 because in that black organic material, organic material
11 absorbs a lot of inorganic metals. But if you do look at
12 some of the numbers here, 42 million ppb of copper, that
13 is quite high, especially if you consider on Silver Bow
14 Creek the cleanup level was 1,000, another reason that we
15 are looking at that the Parrot needs to come out.

16 So some of the things that we found during the
17 Parrot Project in Phase 1 is that the highly contaminated
18 groundwater was more widespread than we thought. We also
19 know that there is a time period between Phase 1 and
20 Phase 2. And one of the things that we're looking at
21 doing is trying to capture that contaminated groundwater.
22 That's one of the things that Jim talked about on the
23 field trip, that they've actually implemented an internal
24 pumping system to try to capture the groundwater from the
25 Phase 1 area, pump it over to Montana Resources for

Page 13

1 disposal, so that groundwater is no longer flowing towards
2 Silver Bow Creek or Blacktail Creek.

3 So one of the other questions as we put these
4 amendments out that we heard from a lot of people is: Why
5 were are we doing these now? Why aren't we waiting for
6 later?

7 One of the main reasons is the Governor has
8 determined that the Parrot Project is a top priority and
9 does not want to wait further to delay the project waiting
10 for a consent decree to be signed.

11 Under CERCLA, Superfund law, the Governor has
12 to consider public input or public comment on any
13 restoration, amendments or restoration plans or
14 modifications, before that money is obligated, so we are
15 coming to the public with these amendments and seeking
16 public comment.

17 Another key component of the entire Parrot
18 Project are the Butte shops. Those shops need to be
19 relocated before the Phase 2 tailings can be excavated and
20 removed. We cannot just move the shops and then do the
21 Parrot tailings work later because moving the shops is not
22 a restoration item on its own. The removal of the shops
23 or movement of the shops, relocation, has to be associated
24 with the actual excavation of the Phase 2 tailings.

25 Another important issue is that Montana

1 Resources, that's where we're getting rid of a lot of the
2 waste material, the tailings from the excavation and the
3 groundwater that we're currently pumping. We have an
4 access agreement with Montana Resources for that, those
5 activities, and that does end in 2022, so it's important
6 that we try to get the work done as soon as possible to
7 make that go.

8 So in order to keep the Parrot Project going,
9 we do need to amend the restoration plans because they are
10 a significant change in the restoration plan, so a
11 significant change requires an amendment to those plans.

12 As far as where we are, where we are with the
13 money and how do we know how much money we need,
14 initially, we had a value of \$37 million to complete the
15 Parrot tailings removal project. Some of that's in the
16 project investigation and design. A lot of this is
17 already complete. We already have the bid document put
18 together for the Phase 2 part of project. It will
19 probably need to be upgraded or updated before we go out
20 to bid, but a lot of that heavy lifting on the
21 investigation and design is done. The Phase 1 aspect of
22 the project is done, and that came in under budget, so we
23 were very happy with that.

24 The shop relocation is estimated at \$14.2
25 million. Butte-Silver Bow has put the shops out, the

1 relocation and reconstruction of those shops out for a
2 bid. They received their bid late last week on that.

3 The Phase 2 removal is estimated at \$16
4 million, and that's the engineer's estimate for that work.
5 We also have a significant amount of monitoring that needs
6 to be done to monitor not only the success of the
7 restoration, but in this case, we also have to monitor
8 whether or not the project is having any impacts due to
9 the remedial activities in that area. So those items add
10 up to the 37 million for the entire project.

11 So how does that fit into the entire budget of
12 where we are today and with the amendments that we have
13 out for public comment?

14 Phase 1, okay, so we are starting with 37
15 million in 2016. We had two amendments to restoration
16 plans. The first amendment was to the Butte Area One
17 Restoration Plan where the dollars in the Upper Clark
18 Fork -- or the Upper Silver Bow Creek corridor were
19 committed to the Parrot Project and the Parrot amendment
20 that was approved by the Governor. Also, the Upper Clark
21 Fork River restoration funds associated with the
22 Streamside Tailings Operable Unit remediation excess , 16
23 million -- \$16.5 million was released in 2016, \$8.5
24 million from that allocation from the SSTOU went to the
25 Parrot Project. So the \$10 million from Upper Silver Bow

1 Creek and the 8.5 from the DEQ's excess adds up to 18.5.
2 So 18.5 minus 37 equals 18.5, so we're back here on 2019
3 with amendments that total 18.5. The current balance of
4 the Parrot fund, we have put the Parrot funds into a
5 separate account so that it earns its own interest. The
6 current balance on that is 10.5 today.

7 So the three amendments, three restoration
8 plan amendments, we have in front of you is the
9 Butte-Silver Bow groundwater allocation out of the Upper
10 Clark Fork River restoration fund, there's some
11 unallocated interest and some project funding that we feel
12 could come out of that. That's \$4.7 million.

13 Also in the Upper Clark Fork River restoration
14 fund in the aquatic and terrestrial reserves replace the
15 \$8 million from the greenway set-aside. So out of that
16 \$16.5 million that came out previously, \$8 million had to
17 repay the restoration fund for the greenway set-aside.
18 That was placed in the aquatic reserves. We're also
19 proposing that goes to the Parrot Project.

20 I'm going to talk about this associated, DEQ
21 is proposing to release another \$4 million from the
22 Streamside Tailings Operable Unit. That needs to go
23 through EPA approval as well, but that is part of this
24 amendment. So if that does occur, those dollars would go
25 to the aquatic and terrestrial reserves. I'll talk about

1 that in a little bit.

2 In the Butte Area One Restoration Plan, we're
3 looking at the stream restoration dollars, \$3 million in
4 stream restoration and \$2.8 million from the re-veg
5 components to go to the Parrot Project.

6 As I go through each of these revisions, I'll
7 talk about why we think it's appropriate to bring those
8 dollars out of those specific allocations or specific
9 areas through the Parrot Project.

10 So in the Butte Area One Restoration Plan, the
11 council and the community worked very hard on their
12 development of the restoration plan and allocated the
13 dollars to specific categories. Those categories are all
14 listed here with the original allocation, and then we also
15 provide the fiscal year end.

16 I also have to give our contracts person, our
17 budget person, Shannon, big kudos. She is due with her
18 first child here at any time, and she prioritized trying
19 to get some of these budget numbers done for us, so I
20 really appreciate the effort she went through to get that.

21 But this is where the current balance stands.
22 The waste cap improvements/revegetation is a key one.
23 That' stands at 4.8, and the stream restoration stands at
24 4.5. You allocated 4. There's been about a half-million
25 dollars in interest that has been allocated to that

1 category.

2 The stream restoration of the Upper Silver Bow
3 Creek with the asterisk here, basically, these funds have
4 been transferred into the Parrot fund, so they accumulate
5 its own interest with the 8.5 that came over in '16 from
6 the Upper Clark Fork fund.

7 So we're proposing in this amendment to
8 allocate out of the stream restoration of 4.5. Take \$3
9 million from that. That would leave a balance of 1.5
10 million in the stream restoration. We believe this is a
11 good place or a good allocation because in the settlement
12 or in the agreement that's being worked out, Blacktail
13 Creek remedy and restoration is to be completed by DEQ, so
14 those dollars would not be needed from the stream
15 restoration category to do any other work there. So we do
16 think that \$3 million is appropriate at this juncture to
17 move from the stream restoration category.

18 And the waste cap improvements and
19 revegetation, there's 4.8 million left in it at this
20 point. We're proposing 2.8 be removed. Originally, in
21 2012, \$2.7 million was allocated to the soil amendments
22 and placement and seeding on the 100 acres of unvegetated,
23 bare mine dumps throughout the city or in Butte-Silver
24 Bow. None of that \$2.7 million has been spent to date.

25 However, in the work plans that are currently

1 out -- or work currently out for public comment that EPA
2 put out, those areas are due to be dealt with by remedy.
3 So since they're being proposed to be dealt with by
4 remedy, we believe that \$2 million can come out of this
5 portion of this allocation because remedy is going to do
6 that. We would leave about a million dollars in there to
7 do additional restoration and enhancement on top of the
8 remedy that should be done there.

9 The rest of the dollars would come out of the
10 soil testing placement and tree- and shrub-planting
11 activities. We propose a million dollars out of that.
12 That would leave more than enough money to complete the
13 contracts that we currently have out for all of the tree
14 planting and the revegetation activities under that
15 allocation at this time. So that's the rationale for the
16 5.8 coming from the Butte Area One Restoration Plan.

17 In the Butte Groundwater Restoration Plan, if
18 you remember, in the Upper Clark Fork River Basin in 2012
19 when we developed the restoration plans with the Advisory
20 Council, in the long-range plan, it was determined that we
21 would allocate the funds for the percentages of the
22 lawsuit. And that was 36 percent to groundwater, 39
23 percent to aquatics, and 25 percent to terrestrial.

24 In the groundwater allocation, those were
25 going to the counties, Anaconda-Deer Lodge County and

1 Butte-Silver Bow County, for those counties to develop
2 their own restoration plans and spend those dollars as
3 they saw they needed to as replacement dollars for their
4 lost groundwater.

5 So the Butte groundwater account or the Butte
6 groundwater allocation has accrued interest since 2012.
7 That interest is unallocated and it currently stands at
8 approximately \$4.2 million. So we are proposing that that
9 unallocated interest be allocated to the Parrot Project.
10 There are also some other projects that Butte did allocate
11 some dollars to that we propose and have talked to them
12 about, about allocating some of those dollars to the
13 Parrot Project, for a total of \$4.7 million.

14 So in Butte when they developed their
15 restoration plans, they actually developed two restoration
16 plans. The first restoration plan in 2012 was developed
17 under the Babb administration, and then in 2014 the
18 Vincent administration rewrote the restoration plan.

19 The one component of the 2012 restoration
20 plan, the '14 plan cap was the construction of the Big
21 Hole transmission line from the Big Hole River to Butte to
22 finish that line, and in the 2014 plan, they allocated the
23 \$6 million to that. Of that, \$3.4 million remains to
24 date.

25 In the 2014 restoration plan, a majority of

1 the money, \$30 million, was allocated to the Butte
2 restoration plan; 6 went to the transmission line; and the
3 rest of the majority of it went to building the water
4 treatment plant out at Basin Creek. The other funding for
5 the water treatment plant came from the BAO allocation
6 where the council there, in the restoration plan,
7 allocated \$10 million to the Basin Creek Plant. The rest
8 of the dollars that are allocated in the Butte restoration
9 plan basically goes to controls and other telemetry and
10 work to help upgrade their system and make it more
11 effective.

12 Right now, the biggest leftover right now that
13 is not seeming to go anywhere is that they installed the
14 meters portion of that allocation, but they do have \$1.6
15 million left from the '14 plan, plus the 3.4 from the 2012
16 plan.

17 The Upper Clark Fork River, the restoration
18 fund there, in 2016, as I mentioned before, \$16.5 million
19 from the SSTOU, or the Streamside Tailings Operable Unit,
20 Silver Bow Creek remediation funds were determined to be
21 excess, and they were transferred to the Upper Clark Fork
22 River restoration fund and placed in the aquatic and
23 terrestrial reserves.

24 So of that \$16 million, 8.5 came directly to
25 the Parrot Project. The other \$8 million was actually to

1 reimburse for the greenway set-aside. This was part of
2 the Advisory Council's long-range plan that was going to
3 allocate money to the greenway, to finish the greenway,
4 but it was determined that the first \$8 million from
5 Silver Bow Creek that was left over needed to come back to
6 repay the Upper Clark Fork River restoration fund for that
7 allocation. So that \$8 million went back to repay for the
8 greenway allocation, 4.8 was placed in the aquatics, and
9 3.2 was placed in the terrestrial. And this is all per
10 the process plan that was laid out for the Upper Clark
11 Fork River restoration fund.

12 It was also in 2016, in that amendment, that
13 this \$8 million was to be allocated during the next
14 revision, or when more information became available,
15 concerning the Butte CD or the Anaconda CD, or any of the
16 other information.

17 The \$8 million was not placed in the reserves
18 with the same restrictions that the other dollars within
19 those reserves were placed. The first allocation, so if
20 you remember, the aquatics and terrestrial were allocated
21 "X" number of dollars. Fifteen percent from those pots
22 went to the reserve for each of those, and they are to be
23 held until the balances of the aquatics and the
24 terrestrial are totally spent out, and then they can use
25 those to prioritize and work on other priority projects.

1 But those reserves aren't to be spent until the balance of
2 the aquatic and terrestrial funds are gone. So in this
3 amendment, we're proposing to transfer the \$8 million that
4 was transferred in in 2016 to the Parrot Project.

5 Also in the amendment, as I mentioned earlier,
6 DEQ has determined there's more excess of their SSG
7 dollars that they don't need for remediation, and DEQ is
8 going to propose to EPA that they release \$4 million to
9 the restoration fund. And those would be allocated into
10 the aquatic and terrestrial reserves per the process plan.
11 Basically, that \$4 million splits out to \$2.4 million for
12 aquatics and \$1.6 million for the terrestrial.

13 And like all of the SSG dollars, these dollars
14 are to be spent per the process plan upstream of
15 Cottonwood Creek in Deer Lodge to the headwaters. So that
16 includes Basin Creek and Blacktail Creek, as well as Warm
17 Springs Creek.

18 So in the balance of the aquatic reserves and
19 the terrestrial reserves, if we take this \$4.8 million
20 out, there's currently \$15 million in the aquatics. You
21 take the \$4.8 out, you end up with 10.3. This is actually
22 the number that would have been originally allocated to
23 the aquatic reserves, plus interest, in 2012. The same
24 thing with the terrestrial. There would be about \$4.4
25 million left in the terrestrial reserve, but that is what

1 was placed in those reserves originally in 2012.

2 If the SST remediation excess is approved,
3 there will be additional dollars in those reserves, \$12.7
4 in the aquatics and \$6 million in the terrestrial.

5 So, in summary, we do believe, as I said at
6 the beginning of this, that the staff believes this is the
7 best place to allocate additional dollars to the Parrot
8 Project. And it would be 4.7 from the Butte groundwater;
9 \$8 million from the Upper Clark Fork restoration fund,
10 aquatic and terrestrial reserves; and \$8.5 million from
11 the Butte Area One. That totals \$18.5 million, or
12 basically, the delta that is left to finish the Parrot
13 Project.

14 So in summary, those are the individual
15 restoration plans. We can take questions on each of those
16 individually at the end of the talk, but each of those
17 restoration plan amendments have all consistent provisions
18 within them; i.e., the public comment period and how we're
19 going to spend the dollars. So I'm going to go over those
20 just once. I'm not doing it individually for each
21 restoration plan.

22 So one of the questions we want to answer is:
23 How are we going to spend these dollars that are coming
24 from other sources?

25 First off, we're going to spend what's

1 existing in the current Parrot tailings removal fund, and
2 those are the dollars that came in in 2016. You had the
3 \$10 million from Upper Silver Bow Creek and the 8.5 from
4 the Upper Clark Fork River or the SST leftovers. That was
5 \$18.5 million in '16. It's down to about 10 now.

6 There's provisions in those restoration plans
7 about how we are spending those dollars down and we will
8 continue to do that, but we do propose to spend those
9 first. Those are the first dollars that are going to be
10 spent on the next phase of the Parrot Project.

11 Then, concurrently, we would spend the Upper
12 Clark Fork River, the Butte groundwater, the Butte Area
13 One restoration funds and the Upper Clark Fork River
14 aquatic and terrestrial reserves, we'd spend those dollars
15 down concurrently based on the percent that they are
16 providing in these amendments. So if you remember, the
17 groundwater is about 4.7, BAO is 5.8, and the Clark Fork
18 aquatic and terrestrials was \$8 million. So we'd spend
19 those down on those percentages.

20 The other thing that we are very hopeful for
21 is that we are going to get reimbursed on these. So how
22 are we going to reimburse the various funds? We're going
23 to do the reimbursement the same way we're going to do the
24 expenditures. So if we get "X" number of dollars back, we
25 are going to reimburse on those same percentages, so each

1 fund is reimbursed through the same amount.

2 However, the reimbursement won't be from a
3 future settlement between the State and Atlantic Richfield
4 if such a settlement is finalized through the consent
5 decree and the funds are not required for the DEQ to
6 complete the Blacktail Creek and the confluence portions
7 of that remedy.

8 So what that's saying, in general terms, is
9 that if there's a settlement with the CD, that settlement
10 first goes to work with DEQ or to pay DEQ for doing the
11 Blacktail Creek remediation and restoration work along
12 Blacktail Creek. The funds that are left over from that
13 will go to reimburse these three pots of money that have
14 been allocated to the Parrot Project or were proposing to
15 be allocated to the Parrot Project here in 2019.

16 Another provision, and this directly affects
17 the councils here, is your review and recommendation
18 process. Both councils have process plans of how to work
19 through issues or processes and changes in the
20 restoration plans. Unfortunately, due to the timing that
21 we're under and that I talked about earlier, that we are
22 under a time push to get these amendments to the Governor
23 for his potential approval and consideration, or
24 consideration and approval, we're asking that the
25 councils' consideration comments be considered by the

1 Governor along with the other public input.

2 So we would ask the councils to submit their
3 comments per the public comment period to us, and we will
4 relay those to the Governor for his consideration with the
5 rest of the public comment period at that time.

6 The Governor, or the Trustee, has indicated to
7 us he does not intend this to be a normal process or a
8 precedent-setting process. And to the greatest extent
9 possible, he would like this to be a onetime concurrence,
10 and he proposes that he does file the process plans that
11 have been established for both funds and both councils to
12 be followed in the future.

13 So the public comment period, as I said, we
14 did advertise the public comment period in July 23rd in
15 the area in the basin newspapers that we normally
16 advertise in, we posted it on our website, and we probably
17 sent it out to over 400 people on our various mailing
18 lists within the BNRC's mailing list and the Upper Clark
19 Fork River's mailing list. So everybody has been notified
20 and, as I said, it is on our website.

21 We are accepting written comments, and they
22 are to be submitted to the NRDP by August 22nd by five
23 o'clock. You can send those into our email address or you
24 can send them the old-fashioned way in the mail to our
25 P.O. box. And if you would please put on that "2019

Page 28

1 Restoration Parrot Amendments," it helps us with emails
2 that come in, that we wouldn't miss your email.

3 And with that, now we're going to be open for
4 comments. As Elizabeth said earlier or Harley had said
5 earlier, we have a court reporter here taking our
6 comments. This is not a public hearing, though, so we're
7 going to actually try to answer your questions. The
8 comments we are taking on these amendments will have to be
9 submitted in writing.

10 CHAIRMAN ERICKSON: All right. With that,
11 we'll open it for the council for questions.

12 And, Bill, the question, the first question.

13 CHAIRMAN ROSSBACH: I apologize if this was
14 dealt with on the tour. I'm sorry, I wasn't able to get
15 here.

16 I guess I want to confirm that from a
17 scientific point of view that, really, this is the heart
18 of the problem that we have to deal with in terms of
19 downstream water quality, not only in Silver
20 Bow/Blacktail, but also, ultimately, in the Clark Fork.
21 Is that correct, that this is going to be, going forward,
22 the primary source of continued pollution of these
23 watercourses?

24 UNIDENTIFIED SPEAKER: Could you speak up so
25 we can hear?

1 CHAIRMAN ROSSBACH: My question is I just want
2 to be sure, I'm not questioning -- I think it should be a
3 part of the record, if I missed it, that this project,
4 because of the way the Parrot tailings, the amount of
5 pollution there and the location, that this is a really at
6 bottom, the critical source of contamination for all the
7 downstream watercourses.

A

8 MR. HARRIS: Chairman Rossbach, Harley Harris.
9 I'm going to just take a first stab at that
10 and I think I'm going to ask Jim Ford --

11 CHAIRMAN ROSSBACH: Yeah, I would assume.

12 MR. HARRIS: -- to weigh in. But as a general
13 matter, yes, we've concluded, both as a program and the
14 Governor has been presented with all the evidence that we
15 have, that the Parrot is probably the single most or
16 primary loader to groundwater in that area. There are
17 other sources and, obviously, it's not the only thing, but
18 on a predominant basis, that is.

19 So I think I'd let you, Jim, if you want to
20 draw it out for him.

21 MR. FORD: Yeah, just --

22 MR. HARRIS: Your name, please.

23 MR. FORD: Jim Ford, NRDP. You know, more
24 than technical, we saw the Parrot -- we see the Parrot as
25 the primary loader to groundwater and groundwater

Page 30

1 discharge into the creek that was not being addressed
2 under remediation. So the wastes that are along the
3 creek, so we visited the Blacktail Creek portion of the
4 waste, there's also wastes at the Butte Reduction Works.
5 So the waste that's actually in the creek, obviously, is
6 problematic for the creek, but that's going to be dealt
7 with under remediation. And the other primary loader is
8 stormwater. And, again, that's going to be addressed
9 under remediation.

10 So we saw this, as long as those things get
11 addressed, the wastes that are in the creek and the
12 stormwater, if remediation was dealing with that, this was
13 the next priority in line.

14 CHAIRMAN ROSSBACH: Yeah, that's what I want
15 to be sure was part of the record here. Thank you.

16 CHAIRMAN ERICKSON: Other questions from the
17 council?

18 Go ahead, Chad Okrusch.

19 MR. OKRUSCH: Chad Okrusch, BNRC.

20 I also want it noted for the record that from
21 the beginning of this process, the BNRC has had some
22 heartache about allocating a single restoration dollar to
23 do the work of remedy. And without saying it all of the
24 time, everybody acknowledges that this is remedial action.
25 And at this point, now you're asking us to take over half

B

1 of the money that we were originally allocated, the 28.6,
2 we're up to 15.7 --

3 CHAIRMAN ERICKSON: Eight.

4 MR. OKRUSCH: -- 15.8 to do remedy, which
5 means that that's \$15.8 million that will not do
6 restoration.

7 If you look at the breakdown of the Parrot
8 slag, there was nothing on that slide that said anything
9 about the transition and the restorative action coming
10 after the removal. Right?

11 So on the face of this, it's just incredibly
12 frustrating, to say the least. And I also want it noted
13 for the record that this whole process to me is another
14 -- this isn't a proposal of any sort. This is the
15 presentation of what is going to be done.

16 And this meeting is informational. We have no
17 action to take. In fact, all of our public commentary are
18 going to be bundled in with everything else, which loses a
19 little bit more of the potency that we've been working to
20 create for the last ten years as an organization.

21 So it's frustrating, especially when I know
22 the caliber of person and the character of people that are
23 working on this project from the State's perspective,
24 there's good people everywhere , but we're getting
25 railroaded, and there's an opportunity cost.

1 The opportunity cost is the \$15.8 million
2 that's supposed to be used for restoration legally is not
3 going to be used for restoration. And now we have to pray
4 that we're going to get refunded some of this in a
5 settlement for a decree that is somewhere down the road.

6 So I'm incredibly frustrated by this. It's
7 the first time in my ten years where I feel like the
8 opportunity for meaningful participation, meaning that we
9 could actually affect what's going to happen, does not
10 exist. I feel like this is a preordained thing.

11 MR. HARRIS: May I respond, if I could. Chad,
12 Harley Harris.

13 I have a couple points. One, to be clear, the
14 State of Montana as a state, NRD/DEQ/the Governor's
15 office, has since the 2006 Record of Decision been very
16 clear in its position that we do believe removal of the
17 Parrot to be a remedial responsibility. That position has
18 not changed. So, I mean, that's very clear.

19 Now, why are we doing it? I mean, I take you
20 back to 2016 when we were here talking about the Parrot
21 amendment and the circumstances that we were seeing at the
22 time. The Governor made the decision as Trustee and
23 approved an amendment based upon his belief that the
24 loggerhead that we had with EPA and with British Petroleum
25 over removal of the Parrot, I mean, the other plain fact

1 is that neither of those two entities ever do acknowledge
2 the remedial responsibility associated with the Parrot.

3 So the Governor made that determination. It
4 was a tough call. We are seeing the consequences of that
5 today, right or wrong. But, again, at the end of the day,
6 and as we all saw from Jim's presentation earlier today,
7 what we've seen from the science, it needs to be done.

8 So to the second part of your question, under
9 CERCLA, I mean under the law, and this is the process
10 we're adhering to today, money cannot be finally allocated
11 until public comment is considered. So that's why we're
12 here.

13 Now, on one level, you know, a decision has
14 been made that the Parrot's a priority. That said, you
15 are fully within your rights to make a public comment on
16 this record to the Trustee saying either, "A," that was an
17 ill-advised decision to begin with, it should be
18 reconsidered, or so on and so forth. I mean, that is an
19 appropriate comment. I can't tell you how the Trustee
20 would consider that, but you are fully within your rights
21 to do that.

22 MR. OKRUSCH: This happens to be my academic
23 area of expertise, public participation. And the legal
24 obligation that the EPA has is not just to give us an
25 opportunity, but to help us become meaningful participants

1 in solutions that we're going to have to deal with
2 forever. Not one person from the State, now that Pat
3 doesn't work for NRD, is going to have to deal with this.
4 We are.

5 MR. HARRIS: We're all Montanans.

6 MR. OKRUSCH: Well, I agree with that, but we
7 have a constitutional right to live in a healthy
8 environment here.

9 MR. HARRIS: I mean, I appreciate your
10 frustration, Chad. One last thing I would say, just to be
11 clear --

12 MR. OKRUSCH: Remote control, if you don't
13 live here it is.

14 MR. HARRIS: You do also have the ability to
15 comment upon the allocation, the distribution. I mean,
16 what Doug described, what the amendments set out there is
17 a proposal. It was our best effort at trying to find a
18 way to balance the various stakeholders and interests, but
19 it's not cast in stone.

20 CHAIRMAN ERICKSON: Maureen.

21 MS. CONNOR: Thank you, Madam Chairman.

22 Maureen Connor, Upper Clark Fork River Basin
23 Advisory Council. I had to write it down.

24 I think that it's been my learning experience
25 that restoration dollars are extremely valuable and rare.

Page 35

1 So with that thought in mind, I have a question. It's
2 maybe a little annoying, but that's okay. And I'm just
3 wondering why, on Parrot 2, or the second phase, why
4 that's not a straight remedy with DEQ, rather than using
5 other dollars from a different department.

6 MR. HARRIS: Harley Harris. Maureen, just to
7 clarify to make sure I understand your question: Why is
8 DEQ not doing the project? Or why is --

9 MS. CONNOR: Yeah, basically, Parrot 2, at
10 this point, or the second phase, I guess.

11 MR. HARRIS: You know, going back to when the
12 Parrot Project was kicked off, it has been a project
13 that's been assigned by the Governor to the NRD Program.
14 The funding has, to this point, been all restoration
15 money.

16 And, Jenny, do you have a --

17 MS. CHAMBERS: Yeah, Jenny Chambers, Montana
18 Department of Environmental Quality.

19 Under a Superfund site or under CERCLA, this
20 site isn't a federal Superfund site. Butte priority soils
21 is a federal NPL listed site under federal Superfund.

22 EPA is the lead agency. DEQ has what's
23 referred to as a "consultative role." So as efforts move
24 towards cleanup and what's needed for Butte priority
25 soils, there's a record of decision. Records of decisions

1 lay out what the remedy components are of that remedy
2 that's going to achieve the goals based upon cleanup
3 that's needed.

4 So as Harley indicated, the Parrot has never
5 been determined to be a remedy component. That's never
6 been allocated under a record of decision. However, the
7 groundwater capture component of the subdrain and
8 groundwater impacts are remedied. Blacktail Creek is
9 going to be considered remedy. The work at Butte
10 Reduction Works is going to be considered remedy. Those
11 would be things that, under a record of decision, the
12 agencies under the CERCLA process, EPA or DEQ, would then
13 do the work or oversee that work based upon a responsible
14 party.

15 If there was a cashout or settlement, like if
16 the Clark Fork River cleanup or what might be contemplated
17 for Blacktail Creek, DEQ then can choose to do that role
18 to implement the remedy of that work. So for the Parrot,
19 it is not considered remedy in the eyes of the Superfund
20 record of decision so, therefore, it's restoration, and
21 the restoration agency within the State is doing that
22 work.

23 MR. HARRIS: To be clear, I mean, so far in
24 what is contemplated going forward is that the Phase 2
25 would be done by the State under its restoration

1 authority. Katherine, is that --

2 MS. HAUSRATH: Um-hmm [affirmative].

3 MS. CONNOR: Understood. Thank you.

4 CHAIRMAN ERICKSON: Mary.

5 MS. PRICE: Thank you. Mary Price, Upper
6 Clark Fork River Basin Advisory Council.

7 So looking at the shop removal and
8 replacement, the 4.7 million is 38 percent of the total
9 project cost, the 37 million for Phase 1 and Phase 2, and
10 what I heard is that for that item to be included in this
11 removal action that the buildings have to be removed
12 during the removal action to qualify to be funded through
13 this process.

14 What I hear is there's concern about the speed
15 of this process. And some of that, I guess, and my
16 perception is just based on what I heard today, is the
17 speed of this process is being driven in part by the need
18 to tie in shop removal with this action.

19 I'd like to know more about how the \$14.7
20 million was arrived at; and also if that is correct, if my
21 perception is correct, that part of the timeline that
22 we're faced with is because of the need to tie shop
23 removal with this removal action.

24 MR. HARRIS: Harley Harris. Thank you, Mary,
25 for that question.

1 I need to unpack it a little bit. First of
2 all, the budget and projections that NRD has been working
3 with with respect to the shops is 14.2 and trying to hit
4 that target as best we can and we've been working closely
5 with Butte-Silver Bow to do that.

6 They just had a successful -- well, they just
7 had a bid opening that resulted in some apparent low
8 bidders that allow us, it appears, putting aside questions
9 of maybe contingencies or cost overruns, to be able to
10 make that mark, but that was part of the overall project
11 budget of the 37 million.

12 The tie-in question sort of goes to this.
13 Phase 1, when we started the Parrot Project back in 2016,
14 we had \$18.5 million cash on hand: The 10 from the BAO
15 and the 8.5 from the SST. Phase 1 made sense as a
16 restoration project on its own right. In other words, if
17 you put aside the Phase 2 area, the shop area, whatever,
18 it still made sense to do it. And Jim Ford this morning
19 ticked off a number of the reasons, and those reasons were
20 even reaffirmed and confirmed in the results we had from
21 the project.

22 So then you get to the point of, all right, we
23 need to continue the project. And, you know, I can tell
24 you that there's a strong desire on the part of the
25 Trustee, the Governor, to keep the project moving and to

1 deliver cleanups, a cleaner and restored environment for
2 this community. That's a very strong motivator. But we
3 don't have cash on hand to pay for the remaining two main
4 project components, the 14.2 for the shops, as well as the
5 estimated 16 for the removal for Phase 2.

6 Superfund law requires that before -- and the
7 driver, the problem we have is that in order to keep the
8 project on schedule, and Butte-Silver Bow is very intent
9 on getting the shops project going this construction
10 season if at all possible, this is the point in time where
11 we needed to kind of bite the bullet, so to speak, and
12 allocate the money for the entire project.

13 Now, the reason they're linked is that you
14 don't go pay for moving the shops and leave it to a
15 subsequent decision or subsequent Trustee to decide
16 whether to fund Phase 2. That decoupling of those two
17 phases would essentially, as Doug indicated, render the
18 shops component as being not necessarily a restoration
19 component or a component of a restoration project. It
20 would be sort of standalone.

21 So one way or another, this day was coming and
22 needed to come. And under the law, we needed to provide
23 for a very clear and transparent funding structure for the
24 completion of the project.

25 I hope that gets to what you're asking.

Page 40

1 MS. PRICE: Well, partially. I guess I really
2 want to understand how the dollar figure for the new shops
3 use the term "move." Are they going to be moved, or are
4 they going to be demolished and new ones built somewhere
5 else? That's what I'm trying to understand --

6 MR. HARRIS: New ones will be built --

7 MS. PRICE: -- is how we arrived at the \$14.2
8 million figure.

9 MR. HARRIS: New ones are going to be
10 constructed at a site off of Beef Trail Road on kind of
11 the west side of town. And then once Butte-Silver Bow
12 vacates the current shop complex, they're going to salvage
13 what they can. I think they're leaving four buildings for
14 us to demolish.

15 So at some point under our agreement with
16 Butte-Silver Bow, they vacate the premises, hand
17 possession to us, and we move in and take over from there,
18 tear down what remains and then do the removal itself.

19 Now, the 14.2, it's based upon sort of a
20 mixture of several estimates by engineers and architects
21 and also by real-world proofing, by actual bid processes
22 which just completed. And the lowest apparent responsive
23 bidder that submitted a bid last week to Butte-Silver Bow
24 was \$12.2 million, which fits within that 14.2.

25 There's also expenses for purchasing the land,

1 which we've reimbursed them for, and then there are
2 architectural and engineering fees which, by and large,
3 Butte-Silver Bow has been reimbursed for. But if that bid
4 were to hold and that contract be awarded on that basis,
5 it would fall within that budget.

6 MS. PRICE: Thank you.

7 CHAIRMAN ERICKSON: Maureen.

8 MS. CONNOR: I have many questions, but my
9 favorite one is: When is the BPSOU consent decree coming?

G

10 UNIDENTIFIED SPEAKER: That's a good question.

11 MR. HARRIS: Every meeting. So, Katherine,
12 correct me if I misstate anything here, under the
13 currently announced posture by EPA, there is a deadline of
14 August 12th for a consent decree to be reached. The last
15 I know, that's the currently announced posture.

16 Now, that's not very long from now. I can't
17 tell you whether that will or won't occur by that date.

18 Can you add anything to that, Katherine?

19 This is Katherine Hausrath.

20 MS. HAUSRATH: I mean, I guess, yes, that is
21 the streamside tailings date that's not going to be met.
22 I think that EPA will be looking at options for what they
23 are going to do with that. I'm not exactly sure of the
24 status of that, but August 12th, I think, is not going to
25 be met.

1 MR. HARRIS: The last stated public position
2 that I am aware of and can disclose is that EPA said
3 August 12th. And then after that, they would consider,
4 for example, whether to enter an administrative order, or
5 whatever.

6 MS. HAUSRATH: So those streamside tailings CD
7 does allow for the parties to extend that clock, and so I
8 think that's allowed without a court order. The United
9 States and Atlantic Richfield are the parties to that
10 consent decree so it would be up to those two parties --

11 UNIDENTIFIED SPEAKER: Could you repeat that?
12 Because that is really hard to hear back here.

13 MR. HARRIS: Katherine, why don't you stand
14 up.

15 MS. HAUSRATH: Yes, sorry. Katherine
16 Hausrath, NRDP.

17 The negotiations are proceeding under the
18 streamside tailings consent decree. It's a court order.
19 And the parties to that are the United States and Atlantic
20 Richfield. And the court order allows for the negotiation
21 to be extended without approval of the Court.

22 And so under that consent decree, that time
23 frame of August 12th could be agreed to be extended by the
24 parties, but the State is not a party to that consent
25 decree so we do not have a role in that decision.

1 MR. HARRIS: Did that answer your question,
2 Maureen?

3 CHAIRMAN ERICKSON: Sister Mary Jo.

4 SISTER McDONALD: Mary Jo McDonald, BNRC.

5 I have a couple of questions. The first
6 question I have is: Are we laboring under the fact that
7 Governor Bullock has absolutely approved this proposal?

H

8 MR. HARRIS: No.

9 SISTER McDONALD: What does "no" mean?

10 MR. HARRIS: "No," we are taking public
11 comment under the law as required for the Trustee to
12 consider that comment before a decision is made. So in
13 the eyes of the law, no, that decision is not final.
14 Now --

15 SISTER McDONALD: But he has weighed in and
16 said this looks good?

H

17 MR. HARRIS: Harley Harris, again.

18 Well, Sister Mary Jo, I mean, as I recounted,
19 we did kind of go through the process of addressing the
20 substance or the merits of the Parrot Project back in 2016
21 and, you know, the science behind it, the reasons why it
22 needed to be done. Now in addition, as Jim Ford relates
23 to this body, I mean, everything that we've learned since
24 then through our actions and our analyses serves to
25 underscore that conclusion from that time.

Page 44

1 So again, as I indicated earlier, every
2 comment is fair game. And if the comment that's on your
3 mind is we need to pull back and reconsider, that's
4 something that you're fully within your rights to make.
5 You know, I can tell you - I mean, I don't speak directly
6 for the Trustee - but, you know, the Governor has
7 indicated he's very intent to see cleanup work and
8 progress for this community.

9 And I'll probably let others speak for him
10 more directly, but I think everybody who's been involved
11 in this process has seen him state that very clearly, you
12 know, as recently as the groundbreaking we had last year,
13 that it's time to get Butte cleaned up and moving on to
14 the future.

15 SISTER McDONALD: And I agree with everything
16 you said. The only thing that's still missing is whether
17 he said "yes" to Step 1, 2, 3, and this is where the money
18 is coming from and it's okay to do that. But that, as it
19 is, is a statement.

20 I guess one of my questions is: When does
21 Butte become the priority at the top of the list? This is
22 where the pollution came from, and I'd like to know how
23 much money NRD has spent on various projects since they
24 received the funds and what the results of the spending of
25 that money has been. I'd kind of like a little

1 transparency to show us all of the projects that have been
2 accomplished and the funds that have been expended to that
3 so that we're at a point where we don't have a bank
4 account of 13 million to handle the Phase 2 repair of
5 tailings.

6 So how did we get to this point where we don't
7 have the funds to do it? So we're going to take funds
8 from other places and say, "We'll give you an IOU, so when
9 ARCO does give us funds, then we'll pay you back."
10 Somehow those IOUs never get collected.

11 MR. HARRIS: Well, Sister Mary Jo, I mean the
12 money is there. And as Doug explained, in some cases,
13 like in the Butte groundwater fund, it's money that has
14 not been allocated to anything. That was one of the
15 reasons we felt that was a reasonably palatable way to
16 provide funding for it.

17 I guess I would suggest -- I mean, the Parrot
18 Project is a No. 1 priority for the State of Montana. I
19 mean, it's at the top of the heap. And, you know, we're
20 at the stage where we're trying to kind of turn the corner
21 and drive it towards the home plate and get it done. We
22 need to fund it. I mean, it has to be adequately funded.
23 I think that was the case even back in 2016 when we first
24 kicked the process off.

25 It's taken some while for us to kind of allow

1 -- you know, one of the things that we've been trying to
2 assess is what the contours of the remedy might look like.
3 And as I think you know, in the form of the proposed plan
4 that EPA put out, there are certain work plans and certain
5 elements that are identified. And so those went into our
6 thought process as far as, okay, here's a place where
7 maybe we didn't need - as Doug again explained in the BAO
8 funds - maybe we don't need all of that money we have set
9 aside for re-veg and cap, and maybe don't need all of the
10 stream restoration money because DEQ is going to be taking
11 the lead on the Blacktail confluence site.

12 So I would not think it's correct to say there
13 isn't the money there. It really is just a question of
14 kind of dynamically rebalancing our priorities and
15 perspective.

16 SISTER McDONALD: But in rebalancing the
17 priorities, you're still taking from Butte, funds that
18 were allocated to be used here for restoration and you're
19 going to move them over to the Parrot tailing site, which
20 really should be remedied, and we all know that.

21 MR. HARRIS: Doug, do you want to respond?

22 MR. MARTIN: Yeah. Doug Martin.

23 Sister Mary Jo, so one of the important issues
24 that we all, both councils, have all dealt with over the
25 years is there are restoration dollars, and we all

1 recognize those restoration dollars are not enough to go
2 to all of the projects, all the restoration projects that
3 are out there within Butte, within the Upper Clark Fork
4 River Basin. There's not enough. There's settlement
5 dollars and there's not enough.

6 So having to allocate those to priorities is
7 something that you guys did, the BNRC did in the
8 restoration plan to the various categories. It's
9 something the Upper Clark Fork has done to allocate the
10 funds to the various priority projects within the upper
11 basin.

12 So the Parrot Project is one of those priority
13 projects. That's why there's that reallocation or looking
14 at reallocating toward that. And we can get you numbers
15 on how much has been spent, the damages, you know. The
16 suit was based on the damages that came from Butte and
17 Anaconda, and affected the rest of the basin.

18 The majority of the dollars, just to let you
19 know, have been spent in Butte-Silver Bow. Forty-five
20 percent of the NRD dollars have been spent within
21 Butte-Silver Bow County. I can get you the exact projects
22 that they've been spent on and a list of all of those if
23 you would like that. We can do that.

24 SISTER McDONALD: My last point, and then I'll
25 be good, has to do with the consent decrees. The first

1 one is 1999, Montana and ARCO, and that was determined by
2 court issue. In 2008, there was a settlement between
3 Montana and ARCO. And only at that point do you find the
4 Clark Fork River site incorporated into the 2008 consent
5 decree. Up until that time, it had not been, as far as I
6 can tell, from going back and looking.

7 But Butte has never been Priority No. 1. So
8 we do the Clark Fork River Basin, which is downstream of
9 where all the contaminants have come from. There's
10 something wrong with this picture.

11 MR. MARTIN: Doug Martin, Sister Mary Jo.

12 So the 1999 settlement was a settlement, a
13 partial settlement for the injuries to the State's natural
14 resources and injuries to those resources. The
15 restoration fund was established there for \$120 million,
16 and those funds went to the entire Clark Fork River Basin,
17 from the headwaters of Basin Creek to the Milltown Dam,
18 they went to the basin. So they went to the entire basin.

19 So, for instance, Milltown did not get a
20 specific settlement. There wasn't a specific settlement
21 for Milltown. In 2008, there were three sites that were
22 left out of the 1999. There are nine operable units in
23 total that we had claims for. All but three were settled
24 in 1999: Butte Area One, the Clark Fork River, and the
25 Anaconda uplands, so 2008.

1 And the reason we didn't settle those in 1999
2 is the remedies, we did not know the remedies for those
3 sites. There were no records of decision. For many of
4 them, there was a record of decision so that we could make
5 a settlement on it. But those three sites, there was not
6 a record of decision, so those got held out of the initial
7 lawsuit.

8 But in 2008, there was a record of decision
9 for BAO, the Clark Fork River, and the uplands. So we
10 were able to settle those in 2008. So those did get
11 specific allocations. So BAO got its own specific
12 allocation in 2008, as did the Clark Fork River and the
13 Anaconda uplands. Those are the only three sites that
14 actually got specific allocations in any NRD settlement.

15 SISTER McDONALD: The last question I have or
16 statement is: Nothing has ever been allocated for Silver
17 Bow Creek starting at Texas Avenue below the MRI project.
18 So it's just a blank area, and that's right where the
19 Parrot tailings are, and there are areas there that
20 probably need to be cleaned that will not be touched.

21 So consider Butte, and consider Butte before
22 you take any funding from them that we can use for
23 restoration and not have to wait for the IOU to be cashed.

24 CHAIRMAN ERICKSON: Bill.

25 MR. CALLAGHAN: Bill Callaghan, BNRC.

Page 50

1 I have a question, and I'm not quite sure
2 about this. But the way that I see it, if there are funds
3 left in the aquatic and terrestrial reserves to the tune
4 of somewhere between \$16 million and \$22 million - and
5 correct me if I'm wrong, please - why couldn't we take
6 that \$5.8 million that we want to take from BAO from those
7 funds so that we don't have to sit here and wait and bet
8 on the CD to recoup our monies, if we can recoup our
9 monies?

10 MR. HARRIS: Bill, Harley Harris.

11 I guess, No. 1, thank you for that comment. I
12 mean, that is a fair comment and that's something that if
13 you believe in it and believe in the basis of it, you
14 should make clear in the record.

15 As both Doug and I have explained, I mean, we
16 did the best, in putting this package together, to
17 determine what we thought was an equitable balance between
18 all of the interests in the basin. And, mind you, those
19 reserves are equally available to be used in Butte as they
20 are elsewhere throughout the basin, so it's not preclusive
21 in that regard.

22 So, yeah, it's a fair discussion, and that's
23 why we're here in great part today, is: Is this the best
24 balance? Is there a better way to go about it?

25 Again, I think, and I'll have Doug weigh in if

Page 51

1 he's got anything further, but we did our best to try and
2 find places where we we're not affecting ongoing projects,
3 contracts that have been let, specific projects, and so
4 on, while at the same time preserving as much flexibility
5 for the future.

6 MR. MARTIN: Doug Martin.

7 Bill, also one of the issues with the reserves
8 - and Advisory Council members, please weigh in - when you
9 establish these reserves that we allocated the funds to,
10 one of the main reasons they were established is because
11 there are a lot unknowns. There's a lot of unknowns in
12 Butte, there's a lot unknowns in the Warm Springs Ponds,
13 there's a lot of unknowns in the Clark Fork River, in
14 Anaconda, and other places.

15 So those reserves were set up to help address
16 some of those reserves at the end of the day when the rest
17 of the restoration funds had addressed as many of the
18 priorities as those limited dollars could address. So
19 tapping into those now would actually, in our opinion, and
20 that's why we didn't propose they come out of there, would
21 be that they would be limiting those dollars for other
22 potential unknowns in the future that would need to be
23 addressed, whereas the BAO dollars are for the Butte Area
24 One Operable Unit.

25 The way that the consent decree is written, we

Page 52

1 can't take those BAO dollars and transfer those to
2 Anaconda or to Clark Fork River for future actions if
3 something uncertain shows up down there. So BAO dollars
4 are being spent on BAO.

5 MR. HARRIS: Doug, can I answer that? I want
6 you to check me if I misstate this, but I think it's also
7 the case that of the \$8 million that's part of this
8 proposal is the remaining \$8 million that came in 2016
9 from the Streamside Tailings Operable Unit. That has a
10 little different status in the reserves than the monies
11 that were there before. The monies there were there
12 before 2016, by virtue of the process plan and the
13 restoration plan, actually - again, Doug, correct me - I
14 believe could only be allocated once all of the main
15 restoration funds --

16 MS. CONNOR: Right.

17 MR. ROSSBACH: Yes.

18 MR. HARRIS: -- okay, Maureen and Bill will
19 check me here.

20 MR. HARRIS: So in order to go into what
21 you're saying, in other words, go past the SST million
22 dollars, we'd have to probably remove from the process
23 plan. And that, I mean, that would have been a much
24 bigger deal.

25 Right, Maureen?

1 MS. CONNOR: Yes.

2 CHAIRMAN ROSSBACH: Yes.

3 MS. CONNOR: Maureen Connor, whatever council
4 I'm on.

5 And Bill, actually, that was awesome because I
6 was just about to make a plea for not touching the
7 reserves, so my sister council would not agree with that.
8 But those guys did a good job explaining a portion of why
9 the Upper Clark Fork River Basin Advisory Council set
10 aside the reserves. One was for the unknown, okay, and
11 some massive problem that we caused, essentially.

12 However, at the time of council deliberations,
13 the reserve was really for the future. And our intention
14 was, quite frankly, to at least set a little bit aside
15 that we could allow to build so that we would, in this
16 area, in this Upper Clark Fork country, have a source of
17 restoration dollars, again, recognizing that restoration
18 dollars are incredibly rare.

19 At the time that we made that decision, which
20 was in 2012-11, you know, interest rates were hideous, and
21 they're still not too great. But, you know, in terms of
22 hope, there was and is hope that those small reserves
23 would build over time and that maybe our children, you
24 know, kids of the council, so to speak, would be making
25 some decisions on projects in the future. So I just

Page 54

1 wanted to add that. Those guys did a good job of
2 explaining that problem, but it was also built on hope, so
3 I needed to say that.

4 So having said that, on page 4 of 5(3), the
5 proposed plan allocation from the reserves, I was actually
6 wondering why and what considerations we might have on not
7 putting -- if I'm understanding this right, the order of
8 "go" is any future settlement would first go to the
9 groundwater restoration and then back to the BAO. And
10 then the final third place, and this is after DEQ did
11 everything they were going to do, would go back into our
12 reserves, which I just feel are potentially hugely
13 important when you look a little bit out in the future and
14 know, and constantly know we don't have enough restoration
15 dollars for everything. So for you guys, if you could --

16 MR. MARTIN: Explain that?

17 MS. CONNOR: Yeah.

18 MR. MARTIN: So, Doug Martin.

19 I'm going to try to explain that. So I put
20 the slide back up that shows the reimbursement. These
21 percentages are based on the percent that 4.7 is of 18.5,
22 5.8 is of 18.5, and \$8 million is of 18.5.

23 So if we got \$10 million back in a settlement,
24 26 percent of that \$10 million would go to Butte Area
25 One -- or, excuse me, to the Butte groundwater; 31 percent

1 of that \$10 million would go to BAO, the BAO restoration
2 fund; and 43 percent of that would go to the Upper Clark
3 Fork aquatic.

4 So, basically, you would get reimbursed by the
5 amount of money that you actually spent --

6 MS. CONNOR: Oh. So it's not an order, I see.

7 MR. MARTIN: It's on an equal basis to go back
8 in percentages that they paid out. We would be using the
9 funds on those same percentages, like I said, on this one.
10 It would be the same way. So if we spent \$10 million, 26
11 percent of that 10 would come from the Butte groundwater;
12 31 percent would come from BAO, and 43 percent would come
13 from the Upper Clark Fork aquatic.

14 MR. HARRIS: So, Doug, can I elaborate on
15 that?

16 MR. MARTIN: Yeah.

17 MR. HARRIS: I have a real quick point. So
18 this slide, I'm glad Doug brought up, because this is the
19 actual order or priority of spending of the money.

20 If, if in the fortunate circumstance we were
21 able to spend less than the full amount that we budgeted
22 for Phase 2, then those percentages would also be the
23 percentages that would not have been drawn down or would
24 not have been taken back. Mechanically, we might move the
25 money and then repay it. But that was our ability or our

1 effort to try and reimburse or share the drawdowns based
2 upon these relative proportions. Does that make sense?

3 MS. CONNOR: Yes, it does, actually, and that
4 helps quite a bit. But follow-up, I just want to make
5 sure that I'm clear on this, that any of our consent
6 decree, as Sister refers to it, "IOU," that comes back,
7 first it goes to the -- it goes into the DEQ or does it
8 come to NRD?

9 MR. HARRIS: So this is what we can say at
10 this point.

11 MS. CONNOR: Okay, it's one of those
12 questions.

13 MR. HARRIS: This is still covered to some
14 extent by court order, but what is fair game to talk about
15 is that there's a structure under, currently, the draft
16 consent decree that the parties are working on where a
17 certain amount of money is to be paid to the State. And
18 in return, the State, in part, agrees to take on the
19 responsibility of conducting the Blacktail Creek and
20 confluence area of remedy restoration work, which is what
21 Jenny spoke about.

22 And we've done our own internal -- and also,
23 just as an aside, there is a commitment on the part of the
24 State to set aside some portion of those funds for a
25 potential fund, you know, for a restored Silver Bow Creek.

1 But anyway, to that point, we've done the
2 costing on the Blacktail Creek work. We believe we've got
3 a number which, unfortunately, I can't tell you here.
4 That's one of the very awkward things about standing here
5 right now. We believe there's enough headroom, so to
6 speak, or enough in excess of what's going to be needed
7 for Blacktail that it will be meaningful.

8 MS. CHAMBERS: Chairman?

9 MR. HARRIS: Jenny.

10 MS. CHAMBERS: I guess I just want to add that
11 DEQ will take on that work with working for the public and
12 the community based upon what we need to do to meet the
13 remedy objectives and then to tie in restoration above
14 that. We will also do our diligence to do the most
15 cost-effective cleanup possible, so that we would save any
16 money back for this reimbursement allocation.

17 So like our track record has been on Silver
18 Bow Creek and the ability based upon that settlement to
19 then be able to transfer funding to the restoration to do
20 what needs to be done with that money, if it wasn't used
21 for remediation, it could certainly be used for
22 restoration, and how it's allocated is from there.

23 So we will be asking the community, based on
24 those designs, some of the work that we're moving forward
25 and any options as we start working on that, that project,

Page 58

1 the trade-offs on if more money is spent here, less money
2 would go for reimbursement if it looks like there's more
3 work that needs to be done and kind of how we prioritize
4 that with Blacktail Creek, but our the main objectives
5 would be to meet those remedial objective goals.

6 CHAIRMAN ERICKSON: Go ahead.

7 MS. JOYCE: I'm Helen Joyce. I'm from BNRC.

8 So we had a presentation from you guys when
9 the project kicked off in 2016, and you had not identified
10 all the funds, and I thought it was insane to kick off a
11 project at that time and just do Phase 1.

12 We have heartburn about using restoration
13 dollars to perform remedy. And I don't know if your
14 thoughts were you could leverage the PRPs to have them be
15 a partner on the project, but now we are here using 100
16 percent of dollars for remedy that should be remedy
17 dollars, using restoration dollars for the remedy.

18 But I noticed on one of your slides, you had
19 mentioned your extensive monitoring network today, and one
20 of the slides, it looks like only two years of that
21 monitoring is covered in the current budget. And I just
22 wondered how would we fund the rest of the monitoring so
23 that we will know how successful the project is.

24 MR. HARRIS: Helen, Harley Harris.

25 I think, yeah, you're correct, that the

1 amounts set out in the slide is a two-year estimate. The
2 exact amount of long-term monitoring we're going to need
3 is not known at this point. I mean, in part, you're
4 asking us to project out 4, 6, 8 years, and after Phase 2
5 is done, we just really don't know that.

6 If and when monitoring is required, it may
7 require an additional request or allocation of BAO funds
8 to follow through with it.

9 Jim, did you have anything?

10 MS. JOYCE: I'd like you to give that some
11 thought and think into the future, then.

12 MR. FORD: To get to your point, we have been
13 thinking about this. One of the things that we've been in
14 discussion with BP on is they've got an extensive
15 monitoring program, too, though it looks a little
16 different than ours, and seeing if there's a way that we
17 can marry their needs and our needs all in one program so
18 we're not incurring the expense, but the critical point is
19 that we get the data that we need. Right?

20 MS. JOYCE: Right.

21 MR. FORD: And so we've been in discussions
22 with them. And, I think, you know, other things haven't
23 been so fruitful, but the discussions on combining
24 monitoring plans have been going on. But you bring up a
25 good point. We need monitoring in the future and it's a

1 costly component.

2 MS. JOYCE: And then just one more thing: On
3 the concentrations you show at the Parrot water, is that
4 an average or is that the maximum? What is that?

5 MR. FORD: Yes, that was pre removal, and it
6 was from one that we saw these concentrations, although
7 once we started our excavation, you know, this water has a
8 distinct color to it --

9 MS. JOYCE: Right.

10 MR. FORD: -- you know, it's blue-green. We
11 started seeing that blue-green water everywhere, so
12 similar sorts of concentrations. And we have samples of
13 those, we did grab samples. The problem with groundwater
14 is when you expose it to atmospheric conditions, it's not
15 really groundwater any more --

16 MS. JOYCE: It changes.

17 MR. FORD: -- things precipitate out. But
18 this type of water, you know, a million ppb copper was
19 sort of widespread. When he had the wells before
20 excavation, you know, one of my thoughts was, Well, maybe
21 that well was just sunk in an area where they had a
22 certain type of disposal, it was unique. But as we found
23 out when we excavated it, it wasn't unique.

24 MS. JOYCE: Yeah, maybe some means and
25 standard deviations just so folks can get a flavor for

1 what the range of the contamination is.

2 MR. FORD: Yeah.

3 CHAIRMAN ERICKSON: Go ahead, Chad.

4 MR. OKRUSCH: Chad Okrusch, BNRC.

5 So the slide on the budget for the Parrot, so
6 where is the restoration? What do we do after this is
7 done? How do we get a street through there? Who's going
8 to landscape it? How are we going to contour a new stream
9 that does not yet exist, especially since we just gave
10 away all our money for stream restoration?

11 That's my question. Where is the restoration
12 in the restoration?

13 MR. HARRIS: Chad, Harley Harris.

14 I mean, the landowner of that area is
15 Butte-Silver Bow. We have an agreement with them that
16 both, you know, facilitates their moving off of that
17 parcel and the shops and reimbursement aspect of it, but
18 it also addresses end land use and kind of what it looks
19 like when NRD is done with the restoration project.

20 Under the current version of that agreement --
21 and one of the things, too, to be clear, when you
22 mentioned "roads," I mean, we're responsible for replacing
23 the bulk of the infrastructure.

24 Right, Jim?

25 MR. FORD: Yes.

1 MR. HARRIS: And so there will be a Civic
2 Center Road there again, and there will be the water and
3 other infrastructure associated with all that. The end
4 land use condition that's specified in the agreement is
5 kind of commercial. What's --

6 MR. FORD: Development parcel.

7 MS. HAUSRATH: Yeah, it's not been specified
8 because Butte-Silver Bow has processes that they have to
9 go through to identify the end land use, so that's subject
10 to Butte-Silver Bow's requirements for zoning.

11 COURT REPORTER: Excuse me? I didn't get the
12 end of your statement.

13 MS. HAUSRATH: I'm sorry?

14 COURT REPORTER: I didn't hear the end of your
15 statement.

16 MS. HAUSRATH: So that's subject to
17 Butte-Silver Bow's ordinances for zoning and development.
18 We can't specify that in an agreement between the State
19 and Butte-Silver Bow at this point.

20 MR. HARRIS: But to be clear, I mean, as
21 things stand now, there aren't aspects of that end land
22 use that go beyond leaving a parcel suitable for --

23 MR. OKRUSCH: Restoration.

24 MR. HARRIS: Well, I mean, it will be a land
25 surface that would be suitable for restoration to occur

1 on. The restoration itself --

2 MR. OKRUSCH: That's the definition for
3 "remedy," and we've spent more than half our money on it.

4 CHAIRMAN ERICKSON: All right. We'll go with
5 John, and then unless I have objections from the council,
6 I would like to open it to the public so they get a
7 chance.

8 MR. McKEE: So I totally agree with the
9 pragmatism of cleaning up the Parrot -- sorry, John McKee,
10 BNRC.

11 I completely agree with the pragmatism of
12 cleaning up the Parrot. In fact, I was the only person on
13 BNRC who voted against our plan. The only reason I voted
14 against our plan was because we couldn't identify these
15 other sources that were going to fund removal.

16 So your comment a couple minutes ago, Harley,
17 about you knew this day was coming is sort of an
18 impression in that you did know it was coming. So what I
19 guess what I'm getting at is after ten years of BNRC
20 public meetings of everyone coming in, holding all these
21 public meetings, building these categories of where we can
22 do the restoration, based on the community of Butte
23 wanted, after all that, I guess, my question that I really
24 wanted answered, I guess, by you, Harley, in some really
25 clear words is: What's the purpose of us even meeting if

1 it's just going to be handled bureaucratically at the
2 state level?

R

3 What is the purpose of any of us sitting here?
4 Why did we -- I mean, I have missed time with my kids for
5 the last ten years to make sure that this community had
6 something. So what's the purpose of us even being here?
7 I'm asking you very personally, because I've lost time, if
8 it's just going to go another way.

9 MR. HARRIS: John, thank you for the question.
10 First of all, and this is to everyone on the BNRC and the
11 Advisory Committee and all the public here, thank you very
12 much for all your service to the community.

13 There is a purpose here. When we first came
14 to you in 2016, you know, it was not clear -- I mean, it
15 was clear that we wanted to do the project and it had a
16 solid technical, scientific environmental basis.

17 We all knew sitting in this room that there
18 were BAO funds, there were funds in the restoration fund
19 of Clark Fork, but we didn't tackle the question of
20 whether any of those would ever be needed. At that point
21 in 2016, we didn't know what we know now about the remedy
22 and what was and wasn't going to be done, whether there
23 would be funding of any particular sort. So it would have
24 been very premature, almost speculative, at that point in
25 time to do this.

1 So, no, I recognize your frustration. I mean,
2 it's a frustration, frankly, that we have had as a program
3 about how are we going to put this together. This stuff
4 costs money. It's not free. And we're here today because
5 we believe that we have enough information - we don't have
6 all the information, admittedly, and I feel very awkward
7 about that - but we have enough to move forward, and that
8 there is a reasonable case to be made that we should
9 continue to move forward as opposed to the alternative of
10 not moving forward, at least at this point.

11 MR. McKEE: I completely agree with moving
12 forward. The core of my question is: What's the point of
13 the BNRC or the UCFRB ever meeting again? Because - let
14 me just finish and then I'll let you talk - there's just a
15 path that needs to happen. So why are we putting the town
16 and everybody through public meetings, public process, to
17 try to select things that aren't going to be done?

18 I'm honestly saying I don't want to resign,
19 but why should I come back? There's really no purpose in
20 that.

21 MR. HARRIS: Well, I would say in part, John,
22 I mean, as I said, this is an open, public process. What
23 you have in front of you is a proposal. A decision has
24 not been made. As I told you, I think the Trustee is very
25 intent to see progress in this community continue. I

1 don't want to beat around the bush on that. I mean, that
2 is very clear.

3 But by the same token, which pot's money, what
4 kind of mechanisms, and, frankly, even maybe the question:
5 Hey, maybe we should hold off for a little bit. Those are
6 all legitimate points. I can't tell you as I'm standing
7 here today.

8 I'm not the decisionmaker. I serve the
9 decisionmaker. I advise the decisionmaker. We do our
10 best to honor and facilitate the processes that have been
11 established that you are very important parts of. But I
12 think we do think there is tremendous value, that this
13 discussion today has been tremendously valuable. And I
14 can assure you, the Trustee will be made aware of it.

15 So, Doug?

16 MR. MARTIN: Doug Martin.

17 I'd like to say one more thing to you, John.
18 And I understand what you're saying. You guys have, the
19 BNRC and the Advisory Council, both spent a considerable
20 amount of their time serving.

21 I would also point you at the restoration plan
22 and all of the projects that you have funded and have gone
23 through those processes to put a lot of very good things
24 on the ground here in Butte, to the AC and the Upper
25 Basin, things that would have never been done if it

1 weren't for the settlement dollars coming here.

2 So I would say, yes, there is this
3 reallocation of additional dollars to the Parrot Project,
4 but there's also the other remaining dollars that you guys
5 have had a considerable amount of input into how those
6 dollars are spent and are being spent in the past and
7 going in the future.

8 So I would say, that, yeah, I would not
9 consider your time wasted. I would consider your time,
10 you know, having spent doing those well served and you
11 should be happy. I hope you're happy with that time
12 because you have allocated a lot of money to a lot of
13 great causes.

14 CHAIRMAN ERICKSON: Quick, Mick.

15 MR. RINGSAK: Mick Ringsak, Upper Clark Fork
16 River Advisory Council.

17 In August 26th of 2008, a consent decree was
18 signed by ARCO and the State to pay \$160 million for
19 restoration work. We still haven't seen beyond
20 remediation, but for restoration. It says the total
21 settlement being paid to the State is \$160 million. The
22 State will get 95.5 million to clean up the Clark Fork
23 River site with EPA oversight.

24 Then there will be 72 million to restore three
25 sites: 28.1 million for the Butte Area One; with this

Page 68

1 commitment, \$10 million for the water plant; \$10 million
2 for Phase 1. We're going to spend, roughly, 24 million
3 out of the 28 million of restoration dollars for Butte
4 Area One on remediation. And, additionally, when the 1999
5 decree was signed and we started doing restoration on the
6 entire Clark Fork River, specifically in that agreement at
7 that time, the council said, "We will not do any projects
8 in Butte Area One until a consent decree is signed."

9 So then there's \$13 million, 26 million for
10 Upper Clark Fork River. Where is that \$95.9 million that
11 EPA was managing and the State has? And I'm assuming
12 that's DEQ. How come we're not going into that fund to
13 get this money?

14 MR. HARRIS: Jenny.

15 MS. CHAMBERS: Sure, Jenny Chambers for
16 Montana DEQ.

17 So the 95.5 million for the Clark Fork was a
18 cashout settlement for the State of Montana to meet the
19 obligation under the remedial objectives and requirements
20 under the Record of Decision - Clark Fork. So it is money
21 that the State settled for DEQ to do the work, the
22 remediation work, remedial work, on the Upper Clark Fork
23 corridor. It goes from Warm Springs Ponds down past Deer
24 Lodge, past Grant-Kohrs Ranch, about three or four phases,
25 where we're currently working on Grant-Kohrs Ranch, Phase

Page 69

1 15 and 16, to do that work. So that money has been
2 allocated for that.

3 We've done three phases, I believe, on that
4 project. We have a lot more to go. It's contemplated
5 it's going to go for another 20 years based upon the time
6 frame that we have to allocate that money and do that
7 work. We're slow-walking the project a little bit because
8 we're trying to build the reserve because it's costing
9 more than what was the settlement amount. I am worried
10 that we're going to run out of money in the long term, but
11 we're trying to manage that so we meet the remediation
12 objectives.

13 I think it would be premature at this point to
14 take any money from that because we would have that state
15 liability to find that money somewhere else to do that
16 objective based upon the cashout. That work is still
17 ongoing and still needed to move forward.

18 That settlement was very similar to the
19 streamside tailings settlement. We're done with the
20 streamside tailings settlement. We have an ongoing
21 operation and maintenance account. You've seen there
22 where we have allocated excess money based upon that work
23 being done and only holding the money we need for
24 operation and maintenance to maintain that long term. So
25 Clark Fork, we're still in the middle of cleanup.

1 MR. HARRIS: I think Doug had something to add
2 to this.

3 MR. RINGSAK: Let me say one more thing and
4 then I'll stop. That settlement said this money was in
5 the Clark Fork River corridor, and the Parrot tailings is
6 part of that corridor. There is nothing to prevent the
7 State from taking some of those funds and spending them in
8 that area for remediation if they wanted to or were
9 willing to transfer funding. Because, you know, we've
10 basically taken Butte Area One out of any considerations
11 going forward back in 1999 until this consent decree has
12 been signed in the 1998-99 settlement and allocation draft
13 agreement between Butte-Silver Bow and ARCO.

14 That was back in 1999. That's when they said,
15 "We won't do anything with Butte Area One," and the 1998
16 allocation draft said, "We will have a CD by 2002." And
17 then we got the CD in 2008, but we still never settled on
18 Area One, other than restoration dollars. That's what
19 really bothers me because that agreement in 2008 of August
20 says specifically that 28 million, interest, \$32 million
21 was for restoration, and we're going to spend almost the
22 entire amount on remediation. So I think Butte Area One
23 has been badly looked at over this whole 20-year period.

24 MR. MARTIN: Doug Martin.

25 A couple points, Mick. I'm not debating how

1 much of BAO is going to be spent on the Parrot, I'm not
2 going to debate that. So Just some points of some
3 clarification, so in 1999, there was an initial
4 settlement. The restoration fund was set up and there was
5 the grants program. There was a provision in that grants
6 program that, yes, projects within Butte Area One weren't
7 eligible. The same was for the Anaconda uplands, the same
8 was for the Clark Fork River.

9 So none of the areas that were unsettled,
10 where there wasn't a settlement, those three areas, they
11 were not eligible for grants, either. So it wasn't just
12 Butte Area One. It's also the Clark Fork River and the
13 Anaconda upland areas. We didn't know what remedy was
14 doing because we didn't want any restoration projects
15 being undone by remedy.

16 The other thing - and Katherine may be able to
17 help me with this one - but the settlement in 2008 for the
18 Clark Fork River, there were two settlements: There was
19 one for the remedy portion that DEQ was leading and one
20 for the restoration portion that NRD is holding those
21 funds for. Those are for that specific operable unit,
22 from Warm Springs Ponds to the Milltown Dam. So they are,
23 in that consent decree, they are for that specific area,
24 much like the BAO is for a specific area written into the
25 consent decree. So the dollars going from the Clark Fork

1 River are not available to come to BAO.

2 Yes, Silver Bow Creek is the headwaters, but
3 there are other arbitrary lines in there, much like on
4 Silver Bow Creek, there's arbitrary lines on Silver Bow
5 Creek. I remember the first meeting I went to with EPA
6 and I asked why they weren't tracking something going
7 under the interstate. I was bluntly told that that's
8 somebody else's operable unit. So there are lines there.
9 Those funds can't go over those operable units. So that's
10 to address that question.

11 MR. RINGSAK: Even if the Trustee wants them
12 to.

13 MR. MARTIN: Yes, because it's in the consent
14 decree. That's a court order.

15 MR. KAMBICH: Elizabeth?

16 CHAIRMAN ERICKSON: Okay.

17 MR. KAMBICH: Just a quick statement, it's not
18 a question. It's a statement.

19 MR. HARRIS: Your name?

20 MR. KAMBICH: Jim Kambich with the AC.

21 You kind of look back and say, "Why are we in
22 the position we're in today?" And somebody correct me if
23 I'm wrong. I look back and it's always been a thought of
24 why there was no remedial design from, let's say, Texas
25 Avenue to Montana Street. Well, the reason why is there

U

1 was a voluntary remedial action signed by EPA, BP, and, I
2 believe, Butte-Silver Bow. Somebody correct me if I'm
3 wrong.

4 So once that comes out, the way I look at it,
5 we have a remedial action that is a failed remedial
6 action. And DEQ, through the BNRC, went out and did some
7 well testing and found the *aquavelva*-colored water
8 underneath the area. So now we're trying to reinvent the
9 wheel, per se, and the onus is thrown on all of our backs,
10 all of us that are involved in restoration. MDEQ wasn't
11 subject to anything there. They found the
12 *aquavelva*-colored water.

13 This is just a statement, it's not a question.
14 But it seems to me like, I guess you'd call it, the
15 800-pound gorilla isn't even in the room, or two of them.
16 That's EPA and ARCO. I don't see their name up there.

17 I've got to go to another meeting. It's not
18 that this isn't fun.

19 MR. HARRIS: Thanks, Jim.

20 CHAIRMAN ERICKSON: We're going to move to the
21 public now. Doug?

22 MR. COE: Yeah. I'm Doug Coe, interested
23 Butte citizen.

24 COURT REPORTER: Could you spell your last
25 name, please?

1 MR. COE: C-O-E.

2 So I looked at the two maps up there, Parrot
3 Phase 1 and Parrot Phase 2, and I think they're probably
4 drawn roughly to scale. And, well, actually, page 2 looks
5 -- but then I see that Parrot, they actually have a number
6 for Parrot Phase 1, \$4.5 million, okay, to get the stuff
7 out of there. They're estimating what it's going to cost
8 for Parrot Phase 2, and the estimate is almost four times
9 what Parrot Phase 1 is.

10 And I would like to know where that
11 engineering estimate came from because it seems out of
12 line to me. And if it is out of line, it frees up several
13 million dollars that could be applied in other places and
14 relieve some of the pressure that's being put on where we
15 are drawing money from. So I don't know if there's
16 anybody in here that can answer why it's that much more
17 expensive. It just seems out of line.

18 MR. HARRIS: Mr. Coe, I'm going to let Jim
19 Ford kind of answer the meat of that question, but Phase 2
20 is a much more extensive area of contaminants. It's much
21 more, larger volumes of contaminants, deeper, more
22 infrastructure.

23 I mean, Jim, why don't you kind of --

24 MR. FORD: Yeah, sure. So I can't remember
25 the exact arrow footprint sizewise, but this is about 50

Page 75

1 percent more material that we're moving in Phase 2, so
2 that's one of the cost drivers.

3 But the other real cost driver is the
4 groundwater saturated nature of the bottom of these
5 wastes. So if I had a map here showing where the wastes
6 were saturated, the line would come across right about
7 here, all this being saturated, just the edge of these
8 wastes being saturated -- (gesturing.) And our experience
9 on Phase 1 was that's sort of where we saw the saturated
10 waste was right down where we expected to.

11 So having to dewater, to lower the water table
12 to remove those wastes, is also a cost driver. Now, with
13 that said, if we can reduce the costs on here, as Harley
14 and Doug were going through, those funds will be drawn
15 down less. Right? So if we can save money here, which is
16 our plan, we can draw down less.

17 Now, to that point, we were off by about
18 almost 80 percent on the waste volume in Phase 1 removal,
19 so starting in like two weeks, we have a program to
20 collect a bunch more data in the Phase 2 area to sort of
21 lock down those numbers. We were a little light on the
22 data in Phase 1, enough data, looking at depth, and we
23 want to lock that down. So we expect this fall to revise
24 our engineer's estimate on this with all this new data.
25 But our task, and I think our challenge, is to try to

1 reduce costs on that.

2 But again, it's 50 percent more material than
3 this. This is about 600,000 cubic yards, this was 400 or
4 383 - (gesturing) - and this is groundwater saturated.

5 MR. COE: So is the engineered cover that's
6 also on that map and indicated to be part of Phase 2, is
7 that a small fraction of the cost that will be involved in
8 Phase 2?

9 MR. FORD: No. That's a very good point. So
10 we called "engineered cover" here, it's really
11 evapotranspiration cover. It ends up being, without
12 getting into the complexities of it, it's about 3-1/2 feet
13 of material over this whole area. So there is a sizable
14 cost there for constructing these covers.

15 Now, the good thing about these covers is they
16 are very low O&M going forward, right, because they're not
17 really engineered. You can plant woody species into them,
18 you can get natural grasses. They absorb all the water.
19 But there's a real cost because we've got to bring all
20 that material in. So the cost for this Phase 2 is not
21 only the volume and the groundwater saturation nature,
22 it's also to bring in all this material. You can't just
23 look at this compared to this. It's really this compared
24 to this plus this -- (gesturing.)

25 MR. DAILY: My name is Fritz Daily.

1 I would just like to say a few comments. I
2 could probably talk to you for over an hour and tell the
3 truth of what you really need to know about what's going
4 on. Obviously, you don't have that amount of time.

5 I did prepare a handout that I'd like you to
6 at least pass out and have the folks look at it, anyhow,
7 and take it with them. It kind of gives you some
8 information on what's happening here in Butte.

9 I'm really proud of Chad, John, and Mick, and
10 Sister, and Bill for standing up today and saying what you
11 really needed to hear. Okay? I'm really proud of you
12 guys. I'm proud of you. I'm proud of the Butte Natural
13 Resource Damage Council for what you guys have done. I'm
14 proud of what you said today. You said what really needed
15 to be said, but I need to say a few more things.

16 You know, you don't get a lot of opportunities
17 to say what really needs to be said. It's the first time
18 that I know that these two groups have met together. And
19 I'm a former seven-term Montana legislator, and I was
20 there when the natural resource damage suit was filed and
21 when it was settled. And I, as a member of that
22 delegation, contributed to making sure that that
23 settlement went forward, at least that lawsuit went
24 forward, because we were asked by Governor Schwinden, that
25 was the Butte legislative delegation and the Anaconda

1 legislative delegation, "Do you support that? Do you
2 support the natural resource damage lawsuit?"

3 And, "Yes," we told him that we did, and that
4 helped it to move forward.

5 What's happened in Butte, what John and Mick
6 and Chad and Sister and Bill over here have told you is
7 Butte has not received the proper restoration and cleanup
8 that we deserve; backtrack, "proper cleanup that we
9 deserve." And what you're being asked to do today, the
10 truth of the matter is the State of Montana, the EPA, and
11 the local government have failed this community. They
12 failed this community in not demanding that we receive the
13 quality cleanup and restoration that we deserve.

14 What you're being asked to do today is almost
15 crazy. What you're being asked to do today is to do their
16 job because they didn't to it. That's what you're being
17 asked to do. You're being asked to spend restoration
18 money, which is not cleanup money, which is not
19 remediation money, it's restoration money. It's money to
20 restore the area to a productive, useful use. That's what
21 it's for. It's not for cleanup. It's not for cleanup.

22 I was in the legislature when they closed the
23 smelter that started this whole mess. I was in the
24 legislature when they shut the pumps off. I was in the
25 legislature when they closed the Berkeley Pit. I was

1 there. It was a devastating time for my community, a
2 devastating time. But you know who made that decision.
3 Who made that decision? Everyone in this room knows who
4 made that decision. ARCO, ARCO made that decision. They
5 made those decisions.

6 Who's responsible for this cleanup? ARCO/BP
7 is responsible, not us, not my children and your children.
8 And that's what you're asking us to do. You're saying,
9 "We don't care about ARCO, we don't want them to do it.
10 We want our children to it." That's bullcrap. That's
11 bullcrap. That's what it is. And we shouldn't be doing
12 that.

13 I get worked up with these meetings because I
14 really believe what's going on is wrong. I mean, I really
15 believe that, really strongly, that what's happening is
16 wrong. And it shouldn't happen, and it shouldn't happen.

17 For me, personally, for me, personally, I'd
18 rather the State of Montana would go back and do their
19 job, do their job. I'd rather Governor Bullock did his
20 job, and he would say -- demand, "We want Butte cleaned
21 up. We want the cleanup and restoration that this
22 community deserves." That's what I want. That's what I
23 want.

24 And, Harley, you mentioned the letter that the
25 State sent back in 2005, and I'm very familiar with all

1 this stuff, I've been around for a long, long time. The
2 letter in 2005 said the State of Montana did not agree
3 with what the EPA was doing, leaving the tailings in
4 place. That's what the letter said.

5 But you know what else the letter said? The
6 letter said: We don't care. We don't care. Go ahead
7 anyhow. Go ahead. Go ahead, do it. We agree with you.

8 You know what Butte-Silver Bow said?
9 Butte-Silver Bow said the same thing in the allocation
10 agreement: Leave the tailings in place. Even though Bill
11 right here, your chairman, said right at the very
12 beginning, the very most important thing that needed to be
13 said in this meeting: The Parrot tailings are our
14 priority. If you don't remove the Parrot tailings, you're
15 not going to clean this area up.

16 And keep in mind, everyone in this room, keep
17 in mind this isn't just about Butte, Montana. Everyone
18 likes to think it's about Butte, Montana, and "screw
19 Butte, Montana." Well, I'll tell you what. It's not
20 about Butte, Montana. It's about the corridor from Butte
21 to the Columbia River. That's what it's all about. If
22 you don't clean up Butte, if you don't remove the Parrot
23 tailings and do what's right in Butte, everyone's going to
24 suffer.

25 You know, I'm rambling on, but I don't care

Page 81

1 because I came here because you said this was a public
2 meeting, I came to say what I needed to say. I'm sick and
3 tired of going to these meetings. I'm sick and tired of
4 going, because just what John said, you guys have a plan
5 already in mind. You guys know what you're going to do.
6 You're going to take \$23 million of Butte's restoration
7 money.

8 How much are you taking from Missoula's 30
9 million? None, zero. Plus Missoula already has a
10 beautiful park, you know, they have a beautiful
11 amphitheater. And what do we have? Nothing. And it's
12 wrong. And you guys need to know that. Everyone in this
13 room needs to know that.

14 If you think I'm fired up, I can get really
15 fired up if you want. But, anyhow, thanks for listening
16 to me. And I don't apologize for what I said because
17 that's what I believe.

18 CHAIRMAN ERICKSON: Any other -- Robert?

19 MR. PAL: Thank you. I also agree very
20 much --

21 CHAIRMAN ERICKSON: Robert --

22 MR. PAL: Sorry. Robert Pal, Montana Tech.

23 COURT REPORTER: Spell your last name, please.

24 MR. PAL: P-A-L.

25 So I'm speaking here as a person who is

Page 82

1 actually also a director of a program that is funded by
2 the DNRC. And I thought, Well, I need to actually say
3 something because I'm just afraid that for the future, and
4 I really agreed with Maureen's and Chad's words, that it's
5 not just that you're taking the restoration dollars away,
6 basically, it's you're taking the future of the
7 restoration away.

8 And I'm teaching a restoration program, I'm
9 doing a restoration program at Montana Tech. And then I'm
10 just telling all my students, "Well, why should you come
11 to Montana Tech? Why should you do all the things you are
12 doing?"

13 Well, Butte is a perfect example. It's a
14 great laboratory for restoration. And I think more and
15 more people are coming here to learn about restoration and
16 do restoration, and I think we should keep that up because
17 this is one of Montana's, Butte's future. And, I believe
18 that taking it away will, as you said, will take the
19 future of our programs away.

XX

20 Yeah, sorry. I was just a little fired up by
21 his words.

22 CHAIRMAN ERICKSON: Go ahead, Joe.

23 MR. GRIFFIN: Joe Griffin, DEQ, retired.

24 I'm going to follow up on Robert's because I
25 was trying to precede him. Outside of the NRD giving

1 Butte clean drinking water, probably the best water in the
2 state, I think one of the most important programs has been
3 this cost-sharing agreement between Montana Tech and the
4 BNRC. They have built this program which, really, I could
5 argue this again, it's doing remedy work because the EPA
6 said what we want to see for remedy, they chose the
7 State's reclamation standard, and that's based on native
8 plants, it's based on trees and shrubs. The reclamation
9 in this town has been almost strictly grass and a lot of
10 non natives.

11 But this program came along, NRD, both
12 programs, it came out of both funds, so there are now
13 greenhouses up at Tech and they've been getting out on the
14 ground. They have been working closer and closer with
15 Butte-Silver Bow Government.

16 I think it's critical to the long-term
17 stability of all of the 600-some-odd acres, those caps in
18 this city, that this program continue. I would also kind
19 of argue that the BNRC needs to protect its investment in
20 this program. So I realize there's this idea about
21 reimbursement. I would certainly like to see that
22 prioritized under reimbursement. I know there's still a
23 million dollars that will stay here no matter what, and I
24 certainly can appreciate that. So this isn't a question.

25 Thanks.

1 CHAIRMAN ERICKSON: Go ahead, Ted.

2 MR. DODGE: Ted Dodge, Executive Director of
3 the Watershed Restoration Coalition out of Deer Lodge.

4 I also live in Butte.

5 COURT REPORTER: I'm sorry, could you speak
6 up?

7 MR. DODGE: I have a Butte tie, and I
8 appreciate --

9 MR. HARRIS: Speak up.

10 MR. DODGE: I appreciate what's been said
11 here. I want to speak about something else; that is, the
12 aquatic and the terrestrial dollars that we're talking
13 about taking. I believe they may not be the magnitude of
14 what we're talking about here, but we are cleaning up the
15 Clark Fork River and trying to connect those tributaries
16 to improve the fishery in the Clark Fork.

17 When we take a look at the Silver Bow Creek, Z
18 the waters from Silver Bow Creek are Blacktail and Brown's
19 Gulch until you get to German Gulch. Silver Bow Creek
20 right now is Blacktail. That water is strictly Blacktail.
21 There's important work being proposed on Basin Creek that
22 is a recreation opportunity for all of us.

23 I am concerned that if we don't address and we
24 do not get that reserve back, we right now do not have
25 enough money in the Blacktail, both on the interstate, the

1 other side of I-90, that part of the BAO, to do what's
2 needed. There are fish passage issues up there that
3 require removal of nine culverts. There are a lot of
4 other issues out there.

5 And so when we're talking about taking reserve
6 funds, there's more than just what we're talking about
7 here recently today. There's other areas in the basin,
8 including Butte, Blacktail, and Brown's Gulch, that are
9 important if we want to achieve what we've set out to do.

10 And the terrestrial program, through the
11 terrestrial program, everybody including Butte folks,
12 we're getting approved wildlife habitat in the basin and
13 we're getting hunting access for folks. No work is done
14 out there unless the landowner agrees to that hunting
15 access.

16 So bottom line, don't forget the fact that
17 there's more at stake here than what we've been talking
18 about, and if we want to do a good job in the basin, if
19 the funds are returned, I'm not going to hold my breath,
20 but if the funds are returned, I hope we do two things:
21 We're not setting a precedent, and that we're going to
22 stick to the fact that the money will be returned to those
23 reserves as outlined. Thanks.

24 CHAIRMAN ERICKSON: Mary.

25 MS. CRAIG: I am Mary Kay Craig, a Butte

1 native.

2 And I, excuse my voice, I did help to start a
3 group here in Butte in 1995 called "Citizens for Labor and
4 Environmental Justice."

5 I'm wondering if the State, along with EPA,
6 has any responsibility toward environmental justice. I'm
7 concerned about the future people of Butte. I believe
8 that if you -- you know, you can look at the clean and
9 healthful environment that we're all supposed to have in
10 the state constitution, but over and above that, there's
11 environmental justice.

12 And 27.2 percent of the children in Butte in
13 2017 in Grades 1 through 4 were living below the poverty
14 level; 18.9 percent of all the people in Butte were living
15 below the poverty level. Environmental justice in the
16 EPA's regulations is to address these kinds of people so
17 that when you look at the EJ screen that EPA has, uptown
18 Butte comes up in red. So this is some of the poorest
19 people in the whole nation.

20 I am saying to you that I think you should
21 look at giving Butte extra consideration over and above
22 the clean and healthful environment because of the fact
23 that we have had a polluted city that has not been able to
24 grow economically like any of the others, and we've still
25 got this very huge component of poor people, including

Page 87

1 youngsters. We should not be taking money away from the
2 money that was allocated for BAO.

3 This cleanup restoration dollars and what
4 you're proposing looks to me like leftovers. Unless
5 anyone does not know what the word "ort" means, orts are
6 the crumbs that fall from the tables. It's a crossword
7 word. And that's what I feel like is an ort eater. I
8 hope you'll do something better for Butte. Thank you.

9 MR. LEONE: Alex Leone of the Clark Fork
10 Coalition.

11 COURT REPORTER: Spell your last name, please.

12 MR. LEONE: Al Leone, L-E-O-N-E.

13 Just a quick question: With all the unknowns
14 out there, with the comments on Facebook, Google,
15 uncertain, and the IOUs on the consent decree, why aren't
16 we waiting for that, those numbers, before we go through?
17 So why not wait for the consent decree to get signed and
18 wait for the full data on Phase 2?

19 MR. HARRIS: Alex, that's a good question. As
20 Doug explained in our materials, there are other drivers
21 that are moving things forward. We have existing
22 arrangements in place for Montana Resources for taking the
23 waste. The contamination is an ongoing matter. And,
24 again, as I have indicated, the Trustee, the Governor, is
25 very much of the mind that Butte needs to see a cleanup

1 and needs to see progress.

2 All that said, I think your question is a good
3 one. I would urge you to pose it in the public record.
4 And, certainly, the Trustee will see it.

5 CHAIRMAN ERICKSON: Northey.

6 MR. TRETHEWAY: Yeah, my name is Northey
7 Tretheway.

8 I want to first thank you for making removal
9 of the Parrot tailings a priority for the State.

EE

10 What I hear -- and I don't understand all
11 these numbers. You go up there and you throw the number
12 up. And I am an engineer, but I tell you what, I didn't
13 see where all the source of these numbers were coming from
14 and how you were moving them back and forth.

15 I did hear a couple of phrases, I think, from
16 Maureen of how precious the restoration numbers were, or
17 from Bill when he talked about the aquatics and
18 terrestrial monies and of the unknowns that are out there
19 in the future. I think from what I also heard today is
20 that Jim Ford, when he described the Parrot and what you
21 found there when you started removing that, that looked
22 like it should have been a remediation-type action, is
23 what I think I heard.

FF

24 So all I can say is that is now a known. And
25 that money, being a known, should be really paid for out

1 of all the other unknowns, not just out of Butte's
2 unknown, which is the BAO fund. It should be treated as
3 the known and a remediation action for what wasn't
4 considered when it should have been done early on.

5 So I think that money, instead of leaving
6 Butte, now we found out from Butte's history and where
7 we're at now, Butte being the epicenter of some of this
8 cleanup, that there's probably a lot of other unknowns
9 that we don't know about, but we won't have any money left
10 in our local accounts to cover that. But we do know the
11 Parrot's a known.

12 Thank you again for focusing in on that and
13 making sure that we now know that that should have been
14 done and it should have been included in the original,
15 that the monies that should come in to pay for that
16 shouldn't be taken out of Butte's funds.

17 MR. HARRIS: Northey, thank you for your
18 comment. I would just add one thing. You know, there's
19 one entity in this room -- or that's not in this room that
20 probably you should make your views known to and that's
21 the EPA. The State has been advocating as best it can
22 since 2006 for what you've described, but to this day, has
23 not been able to persuade the United States Environmental
24 Protection Agency of that.

25 So I would urge you, you know, and I know you

1 believe that strongly, I would urge you to make your views
2 known, and I know you already have many times over, but
3 we've done what we can. We've pushed hard. But I think
4 there's another player in this puzzle that you need to
5 talk to.

6 MR. TRETHERWAY: If I might just make one more
7 comment. We're only one group of people here in Butte.
8 The State of the Montana is much bigger and more powerful
9 than we are. I think the State needs to stand up and
10 fight the EPA to get that.

GG

11 CHAIRMAN ERICKSON: Any more public comment?

12 MR. MARIANO: One more. Mark Mariano, citizen
13 and also I'm a graduate of the Montana grant program, and
14 one of the extreme rare few that actually stayed in Butte
15 afterwards to stay here and help out.

16 I just wanted to make sure in the plan
17 amendment, it had mentioned that there's \$914,000 set
18 aside or left over from being allocated that would go to a
19 reserve to address vegetation projects that may otherwise
20 not be completed. And then, paraphrase, it says: NRDP
21 proposes the work be conducted through the Montana Tech
22 Native Plant Program in consultation with BSB,
23 Butte-Silver Bow.

HH

24 It seems like it's in there maybe like a rider
25 on a bill, or if this amendment goes through that,

1 hopefully, Montana Tech will take more of, if not the
2 leadership role, as there's no ecologists on the board
3 that's employed by Butte-Silver Bow at this time that I
4 know of -- there's one.

5 MR. MARTIN: So you're asking a question?

6 MR. MARIANO: Yeah. The question is, I guess:
7 Will Montana Tech take more of a leadership role with this
8 amendment, if it goes through as it's written --

HH

9 MR. MARTIN: That's the way it is drafted
10 because Tech has taken the leadership role and doing a lot
11 of that, so we are looking at that. As far as the other
12 dollars being in a reserve, they're not necessarily in a
13 reserve. They are in that category. That 900,000 is in a
14 category, much like it has been, to be spent on
15 restoration dollars.

16 So it's not in a reserve that needs to be
17 waited for, for a certain thing. It's in that category.
18 It's allocated to revegetation to be done on those mine
19 caps and those unvegetated areas to augment the revenue
20 that is going on or will be occurring.

21 MR. MARIANO: Okay. So, then, the opposite
22 would be if the amendment, for some reason, doesn't
23 happen, the reallocation, Tech wouldn't lose its
24 leadership.

25 MR. MARTIN: That's correct.

1 MR. MARIANO: Okay. Thank you.

2 CHAIRMAN ERICKSON: Any other public comment?

3 I'd like to make one comment before we finish
4 up here. And that is to say that I think the BNRC
5 Council, we understand how critical it is to remove the
6 rest of the Parrot. And when we start talking about, you
7 know, connecting tributaries and the health of the
8 fishery, I think the No. 1 thing that we can do for the
9 health of this fishery is finish removing the Parrot
10 tailings.

11 I guess my concern here is that the remedy is
12 not done. We don't know what this is going to look like
13 when the remedy is done, and we don't have any restoration
14 dollars to do any restoration in the basin after the
15 remedy is done. So I think that's the concern that you
16 hear from the BNRC here today.

17 Bill, did you have anything?

18 CHAIRMAN ROSSBACH: No, I just wanted to
19 reiterate starting with what Chad said. I've been the
20 chair of the other council, and from the very first
21 meeting ten years ago, the first thing that I asked was,
22 "Why isn't this remediation?" I mean, literally, I'm sure
23 Mary and Jim and Mick and Maureen will all agree, that was
24 the first thing I asked. I said, "Why isn't this
25 remediation?"

1 And it's been frustrating for us, too, and I
2 appreciate that. And I just want to say I think that's
3 the consensus of all of those of us who have been on this
4 thing. It's very frustrating. There isn't enough money
5 and it didn't get allocated right. And, you know, it
6 sucks. But as Jim said, "We've got to do it." I mean,
7 we've kind of got to do it.

KK

8 CHAIRMAN ERICKSON: As far as BNRC goes, we
9 have taken so many shots because we did allocate
10 restoration money to do this remediation, but only because
11 we understood how important it was to the basin for this
12 to be done. And, you know, I think we've stood up and
13 said it needs to be done and we can keep -- I know I've
14 said this a hundred times, we can keep beating our heads
15 against the wall about: It's remediation, it's
16 restoration, whatever. It needs to come out. And that's
17 where we're at.

II

18 MS. CONNOR: Madam Chair, Maureen Connor.

19 I have a couple of just sort of housekeeping
20 things. I appreciate the comments of both chairs and
21 agree with all of you. But I'm kind of curious,
22 housekeeping-wise, what goes to the Trustee, Governor
23 Bullock. Does he get a copy of the meeting notes, the
24 transcript?

25 MR. MARTIN: No. The last slide says

Page 94

1 specifically he will not be given this.

2 MR. HARRIS: So let me try and the address
3 that, Maureen.

4 And if you need to reel me back in here,
5 Katherine, please do.

6 Right now, the way this process is structured,
7 we're actually following the process we followed in all of
8 the restoration before. I mean, we don't hold public
9 meetings on the record. It's not something that we have
10 precedent for. This is an informational meeting.

11 So, No. 1, comments should be submitted in
12 writing at the email address or the physical address
13 there. We are keeping notes or keeping the transcript.
14 And we will try and get that transcript made available
15 very soon, within days. And what I would tell you is that
16 if you read that transcript and it, to your satisfaction,
17 reflects your views, then you can make a comment to that
18 effect, and that would then transmit this transcript to
19 the Trustee. Is that reasonable?

20 Do you see any problems with that, Katherine?

21 MS. HAUSRATH: Yes, that's fine. I mean, I
22 would also say that we'll have the transcript, I mean, we
23 will provide it to Patrick Holmes, the Natural Resource
24 Advisor. It's just as a matter of what gets incorporated
25 in the response to comments that I think is what I think

1 Harley's speaking to. But as far as actually making sure
2 the Governor's office sees this, I mean that's very
3 important to us as well. But as far as what gets a
4 response to comment and gets eventually part of the
5 restoration plan amendment if the Trustee chooses to move
6 forward with this proposal, that will have to be submitted
7 to the email address or through our written comments to
8 our address.

9 CHAIRMAN ERICKSON: Maureen, did you want to
10 finish up?

11 MS. CONNOR: Yeah. Second housekeeping, I
12 guess, is just out of curiosity, wondering if the BNRC and
13 AC, if there's any way we could consider doing a joint
14 letter, if we could get that many people to say the same
15 thing, to enter in the comment period.

16 I just think I would love -- we've actually
17 met several times in the past together and it's been very
18 useful for me, but I think it would be pretty cool if we
19 could craft a letter and see if people were good with it.
20 I don't know, just an idea.

21 MR. WORLEY: My name is Bob Worley. I'm a
22 local citizen.

23 I haven't attended a lot of these meetings,
24 but I guess my question is: When all the remediation work
25 is done , who's going to be responsible to maintain these

LL

1 particular items, these things are being done today?

2 MR. MARTIN: This is Doug.

3 So from a remediation standpoint, so, for
4 instance, Atlantic Richfield or BP/ARCO is doing the water
5 treatment facilities at the Berkeley Pit, they're
6 responsible for it. So if it's a remedy action that
7 remedy is implementing under a consent decree or an order,
8 that remedy party has the responsibility. If it's a
9 restoration action, then restoration dollars are
10 responsible for maintaining those.

11 So, for instance, on aspects of Silver Bow
12 Creek or Thompson Park or other, the children's fishing
13 pond, there are dollars that have been allocated to those
14 projects as restoration projects for the establishment of
15 the maintenance of those and monitoring of those projects.
16 So it depends on who is responsible for implementing the
17 projects.

18 MR. WORLEY: Thank you.

19 CHAIRMAN ERICKSON: All right. Do we have
20 a --

21 SISTER McDONALD: This is an easy one. Could
22 you put the slide back up with the address --

23 MR. MARTIN: Oh, yes.

24 SISTER McDONALD: -- so if people would like
25 to make comments, you'd have the address.

1 MR. MARTIN: It's also in your packet.

2 SISTER McDONALD: Yes.

3 MR. MARTIN: So if you have your packet.

4 MR. OKRUSCH: It should be understood, too,
5 that everything we said in here won't be considered a
6 written comment.

7 MR. MARTIN: Yes, yes.

8 MR. HARRIS: Unless you make it one.

9 CHAIRMAN ROSSBACH: We're going to get the
10 transcript.

11 MR. HARRIS: When we have the transcript
12 available, we'll make it available to you and we'll make
13 it available on the website, and you have the ability to
14 make it formal.

15 As Katherine pointed out, informally, it
16 certainly will go to the Governor's office, but you can
17 also make it formal.

18 MR. OKRUSCH: May I suggest that BNRC and the
19 AC do at least that, copy and paste the transcript and
20 send it in so that it's part of the record?

21 MR. HARRIS: You don't have to even copy and
22 paste. Just reference.

23 CHAIRMAN ROSSBACH: It might have it.

24 CHAIRMAN ERICKSON: Do we have a motion to
25 adjourn?

1 MR. MARTIN: I've got --

2 CHAIRMAN ERICKSON: You've got one more?

3 MR. MARTIN: I have one more.

4 CHAIRMAN ERICKSON: I'm trying to get us out.

5 MR. MARTIN: I'm sorry. Just to let everybody
6 know, one of the requirements under the process plans and
7 the restoration plans is to have annual financial
8 meetings, and that type of thing. We are looking to have
9 both a BNRC and an Upper Clark Fork Restoration AC council
10 meeting - it probably won't be a joint one - sometime this
11 fall to present our annual report to the Advisory Council
12 and to the BNRC at that time. So do expect some
13 correspondence as we move into the fall about when that
14 meeting will be. We'll coordinate with the Chairs on the
15 best dates for that.

16 CHAIRMAN ROSSBACH: I move to adjourn.

17 CHAIRMAN ERICKSON: Do I have a second?

18 MR. OKRUSCH: Second.

19 CHAIRMAN ERICKSON: All right.

20 MR. MARTIN: Wait, you can't leave yet. You
21 can't leave yet. So as we said at the beginning of the
22 meeting, Pat was with the Natural Resource Damage Program
23 he thought for about five years, and it ended up being
24 about ten.

25 I've known Pat since we went to grad school

Page 99

1 together a long time. And he's been a -- I remember
2 talking to him when he applied for the program, wondering
3 what it was all about.

4 I do have to admit that watching Pat work in
5 Butte, he has done a very good job of communicating with
6 the public here and keeping the public informed. He's a
7 very good representative or was a very good representative
8 of the NRDP, and I do want to pass on my own plus I think
9 the program's appreciation for all the work.

10 (Applause.)

11 MR. HARRIS: I also was going to say
12 something, but you know what, you guys all said what
13 needed to be said. Pat has been an absolute joy to work
14 with. And you all know this, there is no person in this
15 room, and there's a lot of people in this room that love
16 this community, but he's up at the top. He did such a
17 tremendous service out of the bottom of his heart for this
18 community and I know he'll continue to do that. So we all
19 wish him the best.

20 Here's a little something from your
21 colleagues.

22 If anybody has anything to say, now's the
23 time. Good stuff.

24 CHAIRMAN ERICKSON: I do. Pat, we're going to
25 miss you. You've been instrumental in what we've been

Page 100

1 able to do for BNRC and irreplaceable. And we thank you
2 for all the time, dedication, knowledge, and energy that
3 you've provided to us. And just thanks. We appreciate
4 your time.

5 CHAIRMAN ROSSBACH: I'm going to speak,
6 hopefully, on behalf of our council. You know, anytime
7 anything had to do with Butte, you were it. You were the
8 source. You were fabulous to work for and never had a
9 problem answering any question that we had. And it was,
10 as Elizabeth said, you will be irreplaceable. You are
11 irreplaceable. Thank you very much from all of us.

12 MR. McKEE: And you're not done yet.

13 MR. CUNNEEN: If I can say something.

14 CHAIRMAN ERICKSON: No.

15 (Laughter.)

16 MR. CUNNEEN: I know John brought up the
17 question did you guys influence this. All I can say is
18 "absolutely." You know, if you look at the restoration
19 plan that you guys put together, we got it to you but you
20 made the decisions, you know, No. 1, that \$10 million for
21 the Basin Creek Water Treatment Plant, ten years ago you
22 couldn't have drank the water out of that pitcher over
23 there. Today you can. That wouldn't have happened unless
24 you guys would have dedicated that money to that plant.

25 Twenty-three small projects, none of that

Page 101

1 would have happened without the BNRC. If you walk over
2 here two blocks to the Steward Mine Yard, there's a
3 forest. That wouldn't have happened without you guys.
4 And you've still got work to do. There's a million bucks
5 in recreation that hasn't been touched. That's not going
6 away. Those are your decisions. Opening up Basin Creek
7 Reservoir to recreation never would have happened unless
8 you stood your ground. And that's a fantastic fishery,
9 and it will be open to all Montanans and all Americans
10 here shortly.

11 There's a lot of work to do there to get it to
12 where we can actually go and enjoy it without danger to
13 ourselves and the resource, but it's going to happen.

14 Moulton Reservoir, same thing. That's a
15 wonderful fishery. You dedicated \$100,000 to making it
16 accessible. And that's going to happen. It wouldn't have
17 without you guys.

18 Parrot tailings, certainly, it's being
19 removed. It wouldn't have without you guys. And if you
20 look at the letter from Richard Opper in 2006, letter of
21 decision or the record of decision, he said: "We don't
22 agree with leaving the Parrot tailings in place," because
23 you guys designated the money to the investigations,
24 they're coming out. Nobody could even spell BRW, Butte
25 Reduction Works, four years ago. It wasn't even on the

1 radar. Now it's coming out because of you guys.

2 And that, you know, when you add all that up,
3 Butte wasn't getting squat until you guys stood up at the
4 plate and took your swings. So don't forget the
5 importance of what you guys have done.

6 So they pay me to do this, and they gave me a
7 nice bonus here, maybe, but you guys have never been paid
8 other than with our gratitude. So thank you guys.

9 (Applause.)

10 (The informational public hearing
11 concluded at approximately 3:35 p.m.)
12

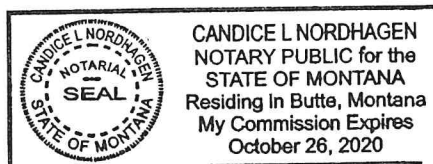
13 * * * * *

1 STATE OF MONTANA)
2 County of Silver Bow)

3
4 I, Candice L. Nordhagen, Court Reporter - Notary
5 Public in and for the County of Silver Bow, State of
6 Montana, do hereby certify:

7
8 That the foregoing public meeting was taken before
9 me at the time and place herein named; the meeting was
10 reported by me in machine shorthand and later transcribed
11 by computer, and that the foregoing one hundred three
12 (103) pages contain a true record of the proceedings, all
13 done to the best of my skill and ability.

14 IN WITNESS WHEREOF, I have hereunto set my hand and
15 affixed my notarial seal this 7th day of August,
16 2019.



(NOTARIAL SEAL)

Candice L. Nordhagen
Candice L. Nordhagen
Notary Public for the State of
Montana residing at Butte,
Montana. My commission
expires October 26, 2020.

ATTACHMENT B: Funding by County

TABLE OF FUNDING APPROVED FOR RESTORATION PROJECTS USING NRD FUNDING – Approved through Consent Decrees, Grants, or Restoration Plans -- September 2019

PROJECT NAME	YEAR FUNDED	COUNTY	PROJECT COSTS
ANACONDA WATERLINE	2002-2010	Deer Lodge	\$13,598,044
WATERSHED LAND ACQUISITION	2000, 2001	Deer Lodge	\$5,831,904
SILVER BOW CREEK GREENWAY ²	2000-2002; 2005-2009; 2011	Deer Lodge	\$6,659,880
STUART MILL BAY ACQUISITION	2002	Deer Lodge	\$2,000,000
DEVELOPING TOLERANT SEED RELEASES ^{3, 5}	2000, 2004, 2010	Deer Lodge	\$672,644
LOST CREEK WATERSHED	2000	Deer Lodge	\$518,382
OPPORTUNITY GROUNDWATER PDG ⁴	2001	Deer Lodge	\$309,268
STUCKY RIDGE/JAMISON CONSERVANCY	2008	Deer Lodge	\$265,335
BLUE EYED NELLIE MOORE ACQUISITION	2009	Deer Lodge	\$142,500
ANACONDA WATER STUDIES	2007	Deer Lodge	\$107,771
WARM SPRINGS PONDS REC. IMPROVEMENTS	2008, 2009	Deer Lodge	\$97,577
TU INSTREAM FLOW PROTECTION ⁴	2009	Deer Lodge	\$25,000
WASHOE PARK PDG	2010	Deer Lodge	\$25,000
WEST SIDE DITCH FLOW STUDY PDG	2008	Deer Lodge	\$25,000
WESTSIDE DITCH METERING PDG	2010	Deer Lodge	\$25,000
HEFNER DAM PDG	2010	Deer Lodge	\$24,750
DRY COTTONWOOD CREEK RANCH	2009	Deer Lodge	\$23,150
MYERS DAM DIVERSION PDG	2002	Deer Lodge	\$11,710
TWIN LAKES DIVERSION PDG	2002	Deer Lodge	\$11,056
SMELTER HILL UPLAND AREA RESTORATION ^{8,9}	2008 CD	Deer Lodge	\$13,266,000
CLARK FORK RIVER RESTORATION ^{6, 8,9}	2008 CD	Deer Lodge	\$6,056,250
Anaconda Groundwater Restoration Plan ⁹	2012 Process Plan	Deer Lodge	\$10,000,000
Mill/Willow Creek (Aquatic)	2018 RP	Deer Lodge	\$662,730
Warm Springs Creek (Aquatic)	2018 RP	Deer Lodge	\$1,611,366
Flint to Rock Creek Study (Aquatic) ⁵	2018 RP	Deer Lodge	\$666,666
Dry Cottonwood Creek Ranch Acquisition (terrestrial)	2018 RP	Deer Lodge	\$2,300,000
Garrity Addition (Terrestrial)	2018 RP	Deer Lodge	\$266,296
Washoe / Hafner Dam Park	2018 RP	Deer Lodge	\$1,500,000
Warm Spring Ponds Planning (SSTOU Remedial Excess 2019	2019 RP Amendment	Deer Lodge	\$2,500,000
		Deer Lodge	\$69,203,279
BUTTE WATERLINE	2001-2010	Silver Bow	\$17,414,083
SILVER BOW CREEK GREENWAY ²	2000-2002; 2005-2009; 2011	Silver Bow	\$16,905,044
BIG HOLE TRANSMISSION LINE REPLACEMENT	2007-2010	Silver Bow	\$8,721,882
BIG HOLE DIVERSION DAM	2008	Silver Bow	\$3,714,833
BIG HOLE RIVER PUMP STATION REPLACEMENT	2010	Silver Bow	\$3,500,000
DUHAME ACQUISITION	2003, 2005	Silver Bow	\$1,668,557
CHILDREN'S FISHING POND/OPEN SPACE	2010	Silver Bow	\$1,200,000
HIGH SERVICE TANK REPLACEMENT	2004	Silver Bow	\$1,192,802
THOMPSON PARK IMPROVEMENT PROJECT	2007	Silver Bow	\$988,402
GERMAN GULCH WATERSHED	2002, 2004, and 2005	Silver Bow	\$925,712
CLARK FORK EDUCATION PROGRAM ^{3, 5}	2003, 2004	Silver Bow	\$721,052
BIG BUTTE ACQUISITION	2004, 2005	Silver Bow	\$687,842
BUTTE NURSERY	2008	Silver Bow	\$628,175
BASIN CREEK DAM REHABILITATION	2003	Silver Bow	\$503,006
BUTTE METERING	2008	Silver Bow	\$273,600
BUTTE MASTER PLAN	2005	Silver Bow	\$174,634
BROWNS GULCH ASSESSMENT	2004	Silver Bow	\$143,404
BIGHORN REACH A REVEGETATION	2000	Silver Bow	\$110,800

PROJECT NAME	YEAR FUNDED	COUNTY	PROJECT COSTS
WETLAND/RIPARIAN MAPPING ⁵	2006	Silver Bow	\$71,400
MAUD S CANYON TRAILS/OPEN SPACE	2010	Silver Bow	\$62,040
CHILDREN'S FISHING POND PDG	2008	Silver Bow	\$25,000
LOWER BROWNS GULCH INSTREAM FLOW PDG	2009	Silver Bow	\$25,000
BROWNS GULCH EDUCATION PDG	2007	Silver Bow	\$17,602
RAMSAY SCHOOL	2004	Silver Bow	\$16,151
BUTTE AREA ONE RESTORATION ^{8,9}	2008 CD	Silver Bow	\$28,050,000
BSB Groundwater Restoration Plan ⁹	2012 Process Plan	Silver Bow	\$30,000,000
Parrot Tailings (SSTOU Remedial Excess)	2016	Silver Bow	\$8,500,000.00
Silver Bow Creek Fish Barrier (Aquatics)	2012 RP	Silver Bow	\$250,000.00
Blacktail Creek (Aquatics)	2018 RP	Silver Bow	\$1,157,245.00
Browns Gulch (Aquatics)	2018 RP	Silver Bow	\$923,403.00
German Gulch (Aquatics)	2018 RP	Silver Bow	\$100,000.00
Basin Creek (Aquatics)	2018 RP	Silver Bow	\$300,000.00
Parrot Tailings (SSTOU Remedial Excess 2016/2019)	2019 RP Amendment	Silver Bow	\$10,500,000.00
		Silver Bow	\$139,471,669
PROJECT NAME	YEAR FUNDED	COUNTY	PROJECT COSTS
SPOTTED DOG ACQUISITION	2010	Powell	\$16,574,009
PARACINI PONDS	2008, 2009	Powell	\$1,201,905
MANLEY RANCH CONS. EASEMENT	2000	Powell	\$608,048
JOHNSON/COTTONWOOD CREEK TRAIL	2006, 2007	Powell	\$633,015
EAST DEER LODGE VALLEY	2001, 2003	Powell	\$544,751
RACETRACK CREEK FLOW RESTORATION	2010	Powell	\$500,000
COTTONWOOD CREEK FLOW PROJECT	2010	Powell	\$289,647
UPPER LITTLE BLACKFOOT RIVER PROJECT	2006	Powell	\$216,044
COTTONWOOD CREEK FLOW PDG	2008	Powell	\$90,377
LITTLE BLACKFOOT RIVER PDGS	2002, 2003	Powell	\$50,000
MIDDLE LITTLE BLACKFOOT FLOW STUDY PDG	2006	Powell	\$25,000
LOWER LITTLE BLACKFOOT FLOW STUDY PDG	2007	Powell	\$25,000
OTTER DISTRIBUTION ⁵	2009	Powell	\$26,457
GARRISON TRAILS PDG	2008	Powell	\$24,974
VANISKO CONSERVATION EASEMENT PDG	2007	Powell	\$20,140
CLARK FORK RIVER RESTORATION ^{6, 8,9}	2008 CD	Powell	\$18,168,750
Cottonwood Creek (Aquatics)	2018 RP	Powell	\$1,686,636
Little Blackfoot River (Aquatics)	2018 RP	Powell	\$3,036,482
Racetrack Creek (Aquatics)	2018 RP	Powell	\$734,960
Gold Creek (Aquatics)	2018 RP	Powell	\$600,000
O'Neil Creek (Aquatics)	2018 RP	Powell	\$200,000
Flint to Rock Creek Study (Aquatic) ⁵	2018 RP	Powell	\$666,666
Clark Fork River Ranch (Terrestrial)	2018 RP	Powell	\$2,400,000
Gravelly Warm Springs Conservation Ease (Terrestrial)	2018 RP	Powell	\$3,500,000
Deer Lodge Trestle Park (Rec)	2018 RP	Powell	\$1,400,000
		Powell	\$53,222,861
EAST FORK ROCK CREEK FISH PASSAGE	2009	Granite	\$370,000
PETERSON RANCH CONSERVATION EASEMENT	2009	Granite	\$334,125
UPPER WILLOW CREEK RESTORATION	2002, 2003	Granite	\$307,758
GEORGETOWN LAKE STUDY ⁵	2007, 2008	Granite	\$114,985
DOUGLAS CREEK PDG	2001	Granite	\$35,000
LIMESTONE RIDGE PDG	2009	Granite	\$22,589
Z-4 CONSERVATION EASEMENT	2000	Granite	\$10,000
ANTELOPE/WOOD CREEK REVEGETATION	2001	Granite	\$10,000
FLINT CREEK PDG	2006	Granite	\$7,000
CLARK FORK RIVER RESTORATION ^{6, 8}	2008 CD	Granite	TBD

PROJECT NAME	YEAR FUNDED	COUNTY	PROJECT COSTS
Flint Creek (Aquatics)	2018 RP	Granite	\$4,780,750
Harvey Creek (Aquatics)	2018 RP	Granite	\$586,902
Flint to Rock Creek Study (Aquatic) ⁵	2018 RP	Granite	\$666,666
Buxbaum Conservation Easement (Terrestrial)	2018 RP	Granite	\$250,000
Drummond Riverside Park (Rec)	2018 RP	Granite	\$100,000
		Granite	\$7,595,775
MILLTOWN SEDIMENT REMOVAL PROJECT	2006, 2007	Missoula	\$2,819,072
MILLTOWN/TWO RIVERS REC. FACILITIES	2009	Missoula	\$2,663,749
BONNER PEDESTRIAN BRIDGE	2006	Missoula	\$975,652
MILLTOWN ACQUISITION	2006, 2008	Missoula	\$595,628
MILLTOWN BRIDGE PIER & LOG REMOVAL	2009	Missoula	\$262,177
BIRD'S EYE VIEW EDUCATION PROJECT ⁵	2006, 2009	Missoula	\$124,995
MADSEN EASEMENT	2006	Missoula	\$25,000
OSPREY PROJECT ⁵	2008	Missoula	\$25,000
MILLTOWN EDUCATION PDG	2006	Missoula	\$23,914
U OF MT DATABASE PLANNING	2000	Missoula	\$9,550
MILLTOWN RESTORATION ⁷	2005 CD	Missoula	\$13,500,000
CLARK FORK RIVER RESTORATION ^{6, 8, 9}	2008 CD	Missoula	TBD
Milltown State Park (Rec)	2018 RP	Missoula	\$2,450,000
Bonner Dam Removal (Rec)	2018 RP	Missoula	\$50,000
Rock Creek (Aquatic)	2018 RP	Missoula	\$600,000
		Missoula	\$24,124,737
UPPER BLACKFOOT MINING COMPLEX	2008 CFR CD	Lewis & Clark	\$2,500,000
ALL PROJECTS			\$293,618,321

^[1] This table covers all projects approved by the Governor by county either as grant projects or as specific restoration activities as provided for under NRD

^[2] The Greenway Project is in both Deer Lodge and Silver Bow counties; these are estimates by county.

^[3] These project budgets involved approved increases of \$25,000 or less.

^[4] PDG: Project Development Grant

^[5] These projects occur in multiple counties, with the majority of work occurring in the listed county.

^[6] This does not include the \$2.5 million of the \$26,725,000 Clark Fork settlement funding dedicated to the restoration of the Upper Blackfoot Mining

^[7] The \$13.5 million approved for the Milltown Restoration Project includes \$3.9 million from a 2005 Settlement with NorthWestern Corporation and \$9.6

^[8] The 2008 CD for the Smelter Hill Upland Area, Clark Fork River, and Butte Area One sites provided the lump sum amounts shown in the table, plus

^[9] The amount of funding does not include interest earned and allocated to these projects.

ATTACHMENT C: Reimbursement Table (Public)

09/13/2019

Fund	Current Balance (9/16/2019)	Allocation Per Approved 2019 Amendments	Balance post-2019 Amendments	2020 SSTOU Excess Transfer	Reimbursement of BAO (2020)	Balance post-Amendments and 2020 SSTOU reimbursement, not including CD reimbursement.	Allocations from prior amendments	Total Contributions to Parrot, (net of 2020 reimbursement to BAO) (Percent)	Reimbursement from CD (assume \$__M and % contribution, below)	Total after CD reimbursement
BAO	\$11.5	\$5.3	\$6.2		+\$2.5*	\$8.7	\$10 (2012)	\$12.8 (35%)	\$__	\$__
SSTOU Excess**	\$8.0	\$8.0	\$0	+\$5.0	-\$2.5	\$2.5***	\$8.5 (2016)	\$19 (51%)	\$__	\$__
BSB GW	\$9.2	\$5.2	\$4.0			\$4.0		\$5.2 (14%)	\$__	\$__

All figures in millions, rounded.

*Under Amendment modifications, this refund to BAO is allocated to priority stream restoration and riparian habitat restoration in Upper Silver Bow Creek, Blacktail Creek, Basin Creek, and tributaries.

**Under SSTOU CD, all funds not needed to complete remedy are to be transferred (refunded) to UCFRB Restoration Fund.

*** Under Amendment modifications, \$2.5 allocated to Warm Springs Ponds area for the NRDP to conduct aquatic and terrestrial restoration planning and restoration actions.