

Upper Clark Fork River Basin Steering Committee
Meeting Summary
October 7, 2010

Introductions

Gerald Mueller, members of the Upper Clark Fork River Basin Steering Committee (Steering Committee), and others in attendance introduced themselves. Those in attendance included:

Members	Group/Organization Represented
Bob Benson	Clark Fork Coalition
Holly Franz	PPL Montana, LLC
Michele Landquist	Missoula County Commissioner
Jim Dinsmore	Granite Conservation District
Jim Quigley	Little Blackfoot River
Tom Mostad	Natural Resources Damage Program (NRDP)
Jules Waber	Powell County

Agency

Mike McLane	Department of Fish, Wildlife and Parks (DFWP)
Ann Schwend	Department of Natural Resources and Conservation (DNRC)

Public

Rankin Holmes	Clark Fork Coalition
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Staff

Gerald Mueller	Facilitator
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Agenda

- Review September 2, 2010 Meeting Summary
- Updates
 - Water Policy Interim Committee
 - DNRC Public Meeting on “Combined Appropriation”
 - Other Organizations
- Long Range Restoration Priorities and Fund Allocation Guidance Plan
- Basin Closure Follow Up
- Plan Revision Meeting
- Public Comment
- Next Meeting

September 2, 2010 Meeting Summary

The Steering Committee made no change to the September 2, 2010 meeting summary.

Updates

Water Policy Interim Committee (WPIC) - Gerald Mueller reported on the results of the September 8-9, 2010 WPIC meeting. Mr. Mueller presented testimony at the meeting that had been pre-approved by the Steering Committee in support of two bills under consideration by

WPIC, LC9005 and LC9999. LC9005 clarifies the authority of local governments to require, under certain conditions, public water and sewer systems instead of individual wells and septic systems. LC9999 awards reasonable costs and attorney fees in appeals of water right permits and changes at the discretion of the district court judge. WPIC approved these bills as well as the following bills so that they will be introduced as committee bills in the 2011 legislative session. The WPIC member agreeing to sponsor each bill is also noted.

- LC9002, Water Marketing, Representative McChesney sponsor; in approving this bill, the committee removed the language addressing abandonment.
- LC9004, Septic Mixing Zones, Representative McNutt sponsor.
- LC9005, Local Government Authority, Senator Murphy sponsor.
- LC9999, Attorney Fees, Senator Hamlett sponsor.
- LC8002, Use of River Beds, Senator Hamlett sponsor.

Question - Could you please explain more about the marketing bill?

Answer by Holly Franze - This legislation would allow changing the purpose of a water right to marketing without having a buyer for the right. In the change process, DNRC would determine the historic consumptive use, which is the amount of water that could be marketed. After the purpose of the right is changed to marketing, the owner of the right could maintain her or his previous use for a period up to 20 years until a marketing agreement is finalized. A primary benefit of LC9002 is determining the amount of water that can be marketed.

Question – Aren't marketing transactions are occurring under current law? For example water rights at Turah have been sold for mitigation.

Answer - Yes, rights are being marketed now; however, currently, the buyer of the rights must be identified prior to the change application.

Question - What are the conditions that must be met before a local government could require public water and sewer systems under LC9005?

Answer - Under current subdivision law found at 76-3-511(2) MCA, "...a governing body may adopt a regulation more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

- (a) the proposed local standard or requirement protects public health or the environment; and
- (b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology."

Also, 76-3-511(3) provides that "(t)he written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement."

DNRC Public Meeting on "Combined Appropriation" - Gerald Mueller reported that DNRC has announced that its seeking public comment on the definition of "combined appropriation" currently found in Administrative Rule 36.12.101(13). The department will hold a number of public meetings on this topic, beginning on Tuesday, November 16, 2010 from 9:30 a.m. to noon in the first floor Commission Room at the DFWP offices at 1420 E. 6th Ave. in Helena. At these

meetings, DNRC will seek public input before formal rule making begins on a “combined appropriation” of ground water.

Other Organizations - The Clark Fork Coalition and four other water right holders have appealed DNRC’s decision to deny their petition seeking a declaratory ruling that the current administrative rule definition of “combined appropriation” set forth in Rule 36.12.101(13) ARM is invalid and must be rewritten.

Long Range Restoration Priorities and Fund Allocation Guidance Plan

Tom Mostad, Environmental Science Specialist with the NRDP, reported on a resolution adopted by the Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Advisory Council) on September 15, 2010. This resolution provides long-term restoration priorities and allocation guidance for the Upper Clark Fork River Basin Restoration Fund (Restoration Fund). A copy of the resolution is attached separately with this summary in a PDF document. This resolution is a product of the Advisory Council, not the NRDP staff. In crafting this resolution, the Advisory Committee did not start with a previous NRDP document, the “Draft Conceptual Framework for an Upper Clark Fork River Basin Restoration Priorities Road Map,” commonly called the “Road Map”. It does, however, focus on the same three resource categories and percentage allocations of the Restoration Fund found in the Road Map. The categories and their allocations are:

- Groundwater resources, 36%;
- Terrestrial resources, 39%; and
- Aquatic resources, 25%.

Mr. Mostad highlighted the following differences in the Advisory Council resolution from the existing Restoration Fund grant program.

- Recreational Projects - The Advisory Committee resolution narrows the consideration of recreational projects that could be funded to those that would restore an injured natural resource.
- Education Projects - While the resolution recognizes past efforts in this area, it sets a five year period after which no more education projects would be funded.
- Silver Bow Creek - There are two schools of thought about what should be done with any funding left over from past funding Silver Bow Creek projects. The City and County of Butte-Silver Bow wants to keep any left over funding in the area. Others want it returned to the Restoration Fund for use anywhere in the basin. The resolution compromises between these views by allocating left over funds first to Silver Bow Creek, Butte Area One, Anaconda Uplands, the Dutchman Injured Area, and Reach A of the Upper Clark Fork River Injured Area, and then to projects in other areas. As of now, no left over funds exist, and none may exist.
- Administrative Funds - The resolution recommends that NRDP administrative costs be funded according to the three category percentages listed above.
- Monitoring - Project specific and broader basin scale monitoring would be funded from the three category allocations.
- Time Frame - Restoration Fund funding would be guided by the resolution for 20 years.
- Specific Project Funding - Criteria to guide decisions on specific projects are not provided in the resolution. The resolution states that a specific plan for developing, evaluating, and making recommendations for funding projects and programs would be developed by the

NRDP staff, subject to public comment, recommendations by the Advisory Committee and the Trustee Council, and approval by the Governor.

Question - Additional problems on Silver Bow Creek have been identified. Would addressing them require funding from sources other than the NRDP?

Answer - We haven't identified additional problems. Higher flows than expected did occur this past spring, causing bank erosion, but they did not re-entrain contamination.

Question - Under the resolution, would future project funding be guided by the priorities in the existing restoration plans for groundwater plan, Silver Bow Creek, aquatic plan for the Clark Fork tributaries, the terrestrial wildlife plan, and the mainstem Clark Fork River plan?

Answer - The Silver Bow Creek restoration plan is different from the other plans because it does not guide grants from the Restoration Fund. Also, funding for groundwater projects consistent with the ground water plan would be approved by NRDP staff. The other plans would guide project funding, but the project funding process remains to be developed.

Question - Did the Trustee Council participate in developing the resolution?

Answer - The resolution was developed by the Advisory Council. The Trustee Council will consider whether to seek public comment on the resolution at its meeting next week.

Question - Legally, is a restoration plan required?

Answer - This is a question we need to answer.

Question - How much money is left to fund grants?

Answer - According to Appendix D to the resolution, the Restoration Fund currently has \$116 million with \$7.5 million in grants pending.

Question - Will the resolution affect grant funding for this year or next?

Answer - It will not likely affect this year or next year. It may guide funding in 2012. The Advisory Council may recommend that no grants be awarded in 2011 pending approval of the resolution's plan.

Question - Who will decide what projects are funded under the guidance proposal?

Answer - The Advisory Council purposefully did not answer this question; instead, it said that the NRDP staff should propose a new process to decide on project funding. The new process might involve projects proposed by the state or solicited through a request-for-proposals. The legal requirements must be determined before deciding on the project approval process.

Question - Is the current process involving the Advisory Council, Trustee Council, and the governor set forth in law?

Answer - No. The statute required that the governor designate the trustee who makes the funding decisions. A governor prior to Governor Schweitzer designated the governor to be the trustee and set up the Advisory Council and Trustee Council structure.

Comment - I am concerned that funding decisions be made by scientists with on-the-ground knowledge rather than people with an axe to grind.

Comment - While the settlements appear to create large pots of money, in fact the amount is not

that big. Funding should be focused on the damaged area, i.e., the river and its tributaries where the damage occurred.

Comment - While I agree that a clean river is a good thing, who is going to feed us is more important than the fishery.

Comment - I agree; we need to decide on how much agricultural production we are going to give away.

Comment - We need local citizen involvement in project decisions.

Comment - A plan to guide the NRDP is a long-time coming. We need to move forward as expeditiously as possible to develop the criteria that could govern project decisions. The criteria should be vetted by the public.

Steering Committee Action - Those members of the Steering Committee present at this meeting agreed to authorize Mr. Mueller to present comments at the October 14, 2010 Trustee Council meeting urging it to seek public comment on the Long Range Restoration Priorities and Fund Allocation Guidance Plan prepared by the Advisory Council. Mr. Mueller should draft a letter to the Trustee Council and circulate the draft to Steering Committee members for comments. Member comments should be sent to him by the close of business on Tuesday, October 12.

Basin Closure Followup

Gerald Mueller asked the Steering Committee to continue its consideration of whether any modification to the basin's water right closure should be recommended to the legislature. In particular, it should decide whether any modifications are needed regarding two topics raised by the DNRC Missoula and Helena Regional Office Managers. The two topics were an exemption for non-consumptive hydropower developments and period of use limitations for changes.

Highlights of the points made in the subsequent discussion follow.

- Non-consumptive uses potentially impact the fishery and water quality by dewatering a stretch of a stream, even though all water used for hydropower generation is returned to the stream.
- DFWP can intervene in Federal Regulatory Commission hydropower licensing, but the department cannot impose specific bypass flows.
- Both Colorado and California gave green lights to small scale hydropower developments. Doing so resulted in problems such as fish passage barriers.
- Initially, DNRC interpreted non-consumptive uses to include ponds, but the department has narrowed its definition. Ponds are no longer considered to be non-consumptive.
- Some states allow changes to the period of use in water right changes. Such changes may be problems for fishery winter flows.
- The existing closure does not preclude groundwater permits, except to the extent that the groundwater permit would adversely affect surface water.
- It is not smart to ask the legislature to open our closure.
- Adding hydropower generation to an existing diversion may be accomplished through a change rather than a new permit. Such additions, therefore, would not be precluded by the existing closure.
- The new DNRC Missoula Regional Office Manager and Area Manager should be invited to a

future Steering Committee meeting.

Steering Committee Action - Those members of the Steering Committee present at this meeting agreed that no change to the existing basin water right closure is needed. They directed Mr. Mueller to write a letter to the legislature stating that the Steering Committee has conducted the mandatory five-year review of the closure and concluded that no modification of the closure is needed.

Plan Revision Meeting

Gerald Mueller reviewed the following draft agenda for the meeting that will be held at 7:00 p.m. on Thursday, October 21 in this room. Steering Committee members had no suggestions for changes to the agenda. In response to a suggestion to do so, Mr. Mueller agreed to re-circulate an invitation to the Steering Committee email list including basin watershed groups and conservation districts.

Draft Meeting Agenda

- Steering Committee mandate and members
- Upper Clark Fork River Basin Water Management Plan
Adopted 1994
State Water Plan Chapter 1995
Key recommendations
- Review of the Upper Clark Fork River Basin Water Management Plan revision outline

Public Comment

There was no additional public comment.

Next Meeting

The next meeting was scheduled for Thursday, November 4, 2010 at St. Mary's Center in Deer Lodge.

Resolution by The Upper Clark Fork River Basin 2010 Advisory Council for Adoption of a Long Range Restoration Priorities and Fund Allocation Guidance Plan

Whereas, the Upper Clark Fork River Basin Restoration Fund (UCFRBRF) was created as a result of the successful settlement of Natural Resource Damage litigation undertaken by the State of Montana to recover compensation for specifically described and enumerated injuries to the groundwater, aquatic, and terrestrial resources of the Upper Clark Fork River Basin and for the impairment and loss of services those resources provide, and

Whereas, the citizen members of the Upper Clark Fork River Basin Remediation and Restoration Advisory Council were appointed to advise Trustee Governor Brian Schweitzer regarding the use of these funds and to represent the interests of the natural resource damage area of the Upper Clark Fork River Basin. The Council therefore includes residents of Silver Bow County, Deer Lodge County, Powell County, Granite County, and Missoula County. The Council also includes as voting members a representative of the Confederated Salish and Kootenai Tribes and a representative of the United States Department of Interior, and non-voting members representing the State Department of Environmental Quality, the Department of Fish, Wildlife and Parks, and the Department of Natural Resources and Conservation, and

Whereas, the injuries to the resources and services of the Upper Clark Fork River Basin from over 100 years of mining and smelting are pervasive and extensive, the Advisory Council recognizes that no amount of money, with our present knowledge and technologies, can restore fully all the injuries to resources and services and, therefore, the funds that are available need to be expended in a thoughtful and directed manner over a period of years to get us as close as humanly possible to our goal of restoring the Upper Clark Fork River Basin, and

Whereas, the money in the UCFRBRF provides a unique and extraordinary opportunity to create a legacy of restoration of the natural resources and related services for the inhabitants of the Upper Clark Fork River Basin and all citizens of the State of Montana, the Council also recognizes that this opportunity will not be fulfilled unless the Council takes responsibility to ensure that the purposes and goals of the Natural Resource Damage litigation and associated Consent Decrees are effectuated through the development of a publicly supported Long Range Restoration Priorities and Fund Allocation Guidance Plan, and

Whereas, the Advisory Council recognizes the importance of reaching a consensus among Council members, their constituents, regions, and interests due to the limited financial resources available for restoration of the entire Upper Clark Fork River Basin, and, therefore, it has dedicated itself to developing such a consensus Long Range Restoration Priorities and Fund Allocation Guidance Plan that reasonably represents all these varied interests, and

Whereas, if adopted and approved by the Trustee Restoration Council and Trustee, this Plan will serve to guide the Natural Resource Damage Program staff in developing a more detailed plan that includes specific policies and practices, as it deems necessary, for developing, evaluating, and making recommendations for future funding projects and programs and fulfilling the requirements of applicable federal law pertaining to restoration plans.

Now, Therefore, Be It Resolved that:

The Advisory Council has reached consensus on the following Long Range Restoration Priorities and Fund Allocation Guidance Plan that best effectuates the goals of the State of Montana’s 1983 Natural Resource Damage lawsuit and associated Consent Decrees.

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

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

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

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

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

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

The Advisory Council believes that by restoring the injured natural resources, some of the services provided by the resources as described in the State's 1983 claims in *State of Montana v. Arco* and the 1999 Consent Decree will also be restored.

- **Groundwater restoration funding process**

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

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

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

This proposal would thus be based upon the plans and priorities articulated in the Butte-Silver Bow and Anaconda-Deer Lodge water system master plans approved by NRDP and any subsequent updates to these plans.

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

- **Aquatic and terrestrial restoration funding process**

The Advisory Council recommends that future aquatic and terrestrial projects be proposed, reviewed, and funded subject to the same review steps as presently exist (i.e. consideration by the NRDP, Advisory Council, Trustee Restoration Council, and the general public, and final approval by the Trustee). The Council recognizes that NRDP staff will develop a more specific plan that may include additional policies and practices it deems necessary to implement the restoration priorities and funding allocations set forth herein, and/or to fully comply with federal law regarding restoration planning.

Within these two categories, funding decisions should be determined and guided by the comprehensive agency planning documents that are being developed and any subsequent updates and revisions: a) the Tributary Prioritization Plan developed by the Department of Fish, Wildlife & Parks and NRDP (2010), after public comment and recommendation by the Advisory Council and the Trustee Restoration Council and final approval by the Governor, and b) the Terrestrial Wildlife Resource Prioritization Plan developed by the Department of Fish, Wildlife & Parks and NRDP (2010), after public comment and recommendation by the Advisory Council and the Trustee Restoration Council and final approval by the Governor.

- **Funding recreational projects**

With respect to aquatic and terrestrial recreational services, the Advisory Council recommends that recreational projects aimed at providing the recreational services that were the subject of *State of Montana vs. ARCO* be considered for funding from the aquatic or terrestrial resource allocation funds only if such projects are located in injured aquatic and terrestrial resource areas covered in the lawsuit or in the priority areas identified in the State's aquatic and terrestrial priority plans referenced above, and only if such projects offer natural resource restoration benefits, not just recreational benefits. Funding for such projects would come from the either aquatic or terrestrial funds based on the proportion of the project costs attributable to aquatic or terrestrial restoration. Recreation projects that cannot meet these goals would not be eligible for funding.

- **Funding educational projects**

The Advisory Council supports education specific to the restoration of injured resources in the Upper Clark Fork River Basin and recommends that future education funding be confined to the Clark Fork Watershed Education Program. The Advisory Council recommends funding this with administrative NRDP funds, with the budget considered by the NRDP and Advisory Council and approved by the Trustee Restoration Council on an annual basis similar to how it is currently handled, with the termination of funding in five years. This termination date recognizes CFWEP's long-term sustainability goal that emphasizes incorporation of educational materials into school curriculums. Education costs would be divided proportionately by resource category as indicated above (36% groundwater, 39% aquatic, and 25% terrestrial). The approved annual budget for the CFWEP in the 10/11 school year is \$319,695; for the previous year, it was \$323,965.

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

The Advisory Council recommends that in the future, should there be any unexpended money from the SSTOU/SBC remediation fund, that it be returned to the general Upper Clark Fork River Basin Restoration Fund and allocated to a reserve fund for specific projects to be determined based on the overall status of the restoration of resources and services. Future distribution from this reserve of restoration funds should be designated for additional, unfunded, restoration of aquatic and terrestrial resources in these priority injured areas, after exhaustion of available funds earmarked from other consent decrees: Silver Bow Creek, Butte Area One, Anaconda Uplands, the Dutchman Injured Area, and the Upper Clark Fork River Aquatic Injured Areas, keeping in mind the allocation priorities set forth herein and, particularly, the Tributary Prioritization Plan, and the recognition that the areas upstream of Garrison are the most severely injured and have fewer potential additional financial resources available to provide for unfunded restoration needs (Attachment D).

- **Administrative costs**

In the past five fiscal years, NRDP administrative, non-project specific costs have ranged from \$461,961 to \$578,000 and from 3.2% to 10% of the total annual costs. This does not include the expenditures from the UCFRB Restoration Fund that have been specific to funded projects that are not in the grant process, such as the 4-year fish movement study being conducted by MSU or the staff oversight costs for work at the Milltown site. It also does not include the NRDP's administration costs for sites covered under other funds besides the UCFRB Restoration Fund.

For costs specific to the UCFRB Restoration Fund, the Advisory Council recommends that NRDP administrative costs be funded according to the above percentages for costs specific to a resource category, or, in the case of general costs that are not specific to a resource category, be divided among the three allocation categories according to the percentage identified above. For example, the NRDP's costs in reviewing the county proposals and reviewing invoices for approved groundwater projects would come from the 36% of funds allocated for groundwater restoration, with a similar allocation for aquatic or terrestrial review work from the aquatic and terrestrial percentages of allocated funds, respectively. General costs such as rent and advisory council meeting costs would be divided, with 36% to the groundwater allocation, 39% to the aquatic allocation, and 25% to the terrestrial allocation. The NRDP should report annually on its administrative costs.

- **Monitoring**

Projects funded through the funds allocated for groundwater, aquatic, or terrestrial resource restoration will have project-specific monitoring and maintenance needs and any needed monitoring at a broader, programmatic level, such as the current monitoring of trout movement in the Basin; can be charged to the appropriate resource allocation category.

- **Time Frame**

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

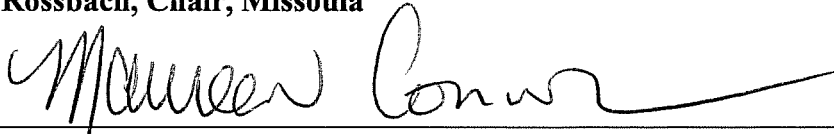
A more specific plan will be developed by NRDP staff for developing, evaluating, and making recommendations for future funding projects and programs and fulfilling the requirements of federal law. That more specific plan will be considered and recommended by the Advisory Council and the Trustee Restoration Council, after comment and input from the public, and then approved by the Governor prior to the initiation of a new funding process.

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

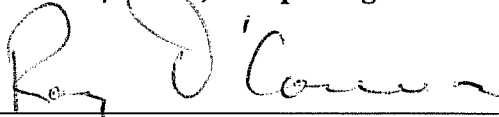
Adopted this 15th day of September, 2010ⁱ



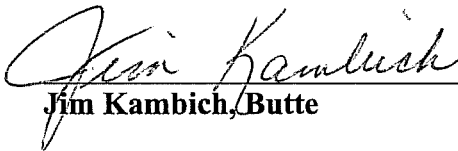
Bill Rossbach, Chair, Missoula



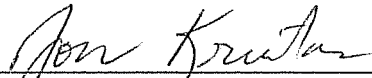
Maureen Connor, Philipsburg



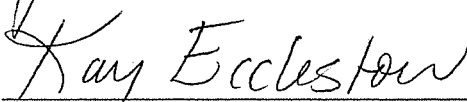
Roy O'Connor, Missoula



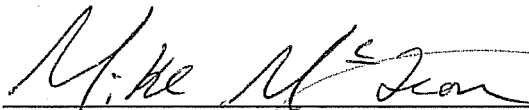
Jim Kambich, Butte



Jon Krutar, Ovando



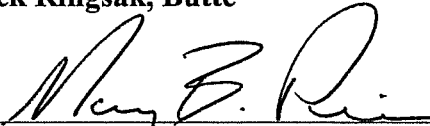
Kay Eccelston, Anaconda



Mike McLean, Anaconda



Mick Ringsak, Butte



for

**Bud Moran, Chairman
Confederated Salish and Kootenai Tribes**



**Laura Rotegard
U.S. Department of Interior**

Attachments used as basis for this document

Attachment A = UCFRB Restoration Fund Status (July 1, 2010)

Attachment B= UCFRB Restoration Fund Nominal Interest Analysis (8/17/10 FYE 2010)

Attachment C=UCFRB Restoration Funds Granted and Proposed (9/13/10)

Attachment D= UCFRB Funding Flow Chart (9/15/10)

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UCFRB Restoration Fund Status – July 1, 2010

4th Quarter Fiscal Year 2010

8/17/2010

1999 Partial Settlement

\$118 million in NRD on or before July 18, 1999,

plus interest from April 6, 1998

\$118 Million (M) – Corpus

\$108 M

\$10 M

Restoration Fund (RF)

\$108.0 M (RF Corpus)

+ 11.8 M interest (4/98-7/99)

\$119.8 M Deposit in 7/99

+106.2 M interest (7/99 to 7/1/10)¹

- 65.6 M expended (7/99 to 7/1/10)

\$ 160.4 M 4th Quarter FY10 Balance (Book Value)²

Remediation Reserve Funds

Silver Bow Creek (4/98-10/08)

Clark Fork River (10/08-present)

-- separate accounting

Notes:

1. This interest revenue includes \$5,859,824 that was transferred from the SBC Reserve Fund to the UCFRB Restoration Fund in October, 2008.
2. As of 7/1/10, an additional \$32.2m in UCFRB Restoration Funds has been approved for expenditure but not been spent. Breakdown: \$28.8m remains to be spent for grant projects approved as of 7/1/2010; \$0.5m remains to be spent of the \$7.6m for the Milltown restoration project; \$2.5 m remains to be spent of the \$3.2 m allocated in the 1999 Consent Decree for the Dutchman project; and \$0.4m remains to be spent for the approved CFWEP through 7/2011. Taking these amounts into consideration leaves an unobligated fund balance of \$128.2m.

Restoration Fund

Nominal Interest Analysis

8/17/10 Update based on FYE 10

m=million

+ \$ 118.0 m	interest earned as of 7/1/10 ¹
- \$ 65.6 m	<u>expended as of 7/1/10</u>
= \$ 52.4 m	unspent interest as of 7/1/10
- \$ 32.2 m	<u>for approved projects through 7/1/10 but not spent²</u>
= \$ 20.2 m	leftover interest

Not included in analysis: Other proposals being considered for Restoration Funds:²

\$16.6 m	Spotted Dog proposal
\$ 6.3 m	2010 Dutchman Consent Decree
\$ 18.0 m	<u>2010 grant proposals (12 proposals; \$7.5m funding cap)</u>
\$40.9 m	Total

¹ \$11.8m earned in interest through 7/99 + 106.2m earned in interest from 7/99 to 7/1/10

² As of 7/1/10, an additional \$32.2m in UCFRB Restoration Funds has been approved for expenditure but not been spent. Breakdown: \$28.8m remains to be spent for grant projects approved as of 7/1/2010; \$0.5m remains to be spent of the \$7.6m for the Milltown restoration project; \$2.5 m remains to be spent of the \$3.2 m allocated in the 1999 Consent Decree for the Dutchman project; and 0.5m remains to be spent for the approved CFWEP through 7/2011. This analysis does not include projected NRD Program administrative costs.

Attachment C

UCFRB Restoration Funds Granted & Proposed (09/13/10)

A. Approved Restoration Projects funded by UCFRB Restoration Fund

Groundwater		Aquatic		Terrestrial	
Anaconda Water Studies	\$107,771	Antelope/Wood Creek Revegetation	\$10,000	Big Butte Acquisition	\$687,842
Anaconda Waterline	\$10,953,654	Bighorn Reach A Revegetation (50%)	\$55,400	Bighorn Reach A Revegetation (50%)	\$55,400
Basin Creek Dam Rehabilitation	\$503,006	Bird's Eye View Education Project (50%)	\$62,498	Bird's Eye View Education Project (50%)	\$62,498
Big Hole Diversion Dam	\$3,714,833	Bonner Pedestrian Bridge	\$975,652	Blue eyed Nellie Moore Acquisition	\$142,500
Big Hole Transmission Line Replacement	\$5,961,882	Browns Gulch Assessment	\$143,404	Butte Fishing Pond/Open Space PDG (50%)	\$12,500
Ramsay School (33.3%)	\$5,384	Browns Gulch Education PDG	\$17,602	Butte Nursery	\$628,175
Butte Master Plan	\$174,634	Butte Fishing Pond/Open Space PDG (50%)	\$12,500	Clark Fork Ed. Program (33.3%)	\$232,934
Butte Metering	\$273,600	Clark Fork Ed. Program (33.3%)	\$232,934	Developing Tolerant Seed Releases	\$395,365
Butte Waterline	\$15,596,537	Cottonwood Creek Flow PDG	\$90,377	Duhamme Acquisition	\$1,668,557
Clark Fork Ed. Program (33.3%)	\$232,934	Deer Lodge Trail PDG	\$25,000	East Deer Lodge Valley	\$544,751
High Service Tank Replacement	\$1,192,802	Douglas Creek PDG	\$35,000	German Gulch (50%)	\$462,856
Milltown Education PDG (33.3%)	\$7,971	Dry Cottonwood Creek Ranch	\$23,150	Haefner PDG (20%)	\$4,950
Opportunity Groundwater PDG	\$309,268	East Fork Rock Creek Fish Passage	\$370,000	Limestone Ridge PDG	\$22,589
U of M Database Planning (33.3%)	\$3,183	Flint Creek PDG	\$7,000	Manley Ranch Cons. Easement	\$608,048
		Garrison Trails Project	\$24,974	Milltown Education PDG (33.3%)	\$7,971
		Georgetown Lake Study	\$114,985	Milltown/Two Rivers Rec. Facilities (50%)	\$1,331,875
		German Gulch (1/2)	\$462,856	Osprey Project	\$25,000
		Haefner PDG (80%)	\$19,800	Otter Distribution	\$24,982
		Johnson/Cottonwood Creek Trail	\$633,015	Paracini Ponds Acquisition (20%)	\$236,841
		Little Blackfoot River PDGs	\$50,000	Peterson Ranch Conservation Easement	\$334,125
		Lost Creek Watershed	\$518,382	Ramsay School (33.3%)	\$5,384
		Lower Browns Gulch Instream Flow PDG	\$25,000	Silver Bow Creek Greenway (50%)	\$7,782,462
		Lower Little Blackfoot Flow Study PDG	\$25,000	Stuart Mill Bay Acquisition (50%)	\$1,000,000
		Madsen Easement PDG	\$25,000	Stucky Ridge/Jamison Conservancy	\$265,335
		Middle Little Blackfoot Flow Study PDG	\$25,000	Thompson Park Improvement Project	\$988,402
		Milltown Acquisition	\$595,628	U of M Database Planning (33.3%)	\$3,183
		Milltown Bridge Pier & Log Removal	\$262,177	Vanisko Conservation Easement PDG	\$20,140
		Milltown Education PDG (33.3%)	\$7,971	Washoe Park PDG (20%)	\$5,000
		Milltown Sediment Removal Project	\$2,819,072	Watershed Land Acquisition	\$5,831,904
		Milltown/Two Rivers Rec. Facilities (50%)	\$1,331,875	Z-4 Conservation Easement	\$10,000
		Myers Dam Diversion PDG	\$11,710	Spotted Dog (80%)	\$13,259,207
		Paracini Ponds PDG	\$17,700		
		Paracini Ponds Acquisition (80%)	\$947,364		
		Ramsay School (33.3%)	\$5,384		
		Silver Bow Creek Greenway (50%)	\$7,782,462		
		Stuart Mill Bay Acquisition (50%)	\$1,000,000		
		TU Instream Flow Protection	\$25,000		
		Twin Lakes Diversion PDG	\$11,056		
		U of M Database Planning (33.3%)	\$3,183		
		Upper Little Blackfoot River Project	\$216,044		
		Upper Willow Creek Restoration	\$307,758		
		Warm Springs Ponds Rec. Improv.	\$97,577		
		Washoe Park PDG (80%)	\$20,000		
		West Side Ditch PDG	\$25,000		
		West Side Ditch Metering PDG	\$25,000		
		Wetland/Riparian Mapping	\$71,400		
		Spotted Dog Acquisition (20%)	\$3,314,802		
Granted Subtotal	\$39,037,459		\$22,882,691		\$36,660,775
Percent Granted to Date by Resource	39.6%		23.2%		37.2%

\$98,580,925

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

Groundwater		Aquatic		Terrestrial	
		Milltown (75% of \$7.6 Million)	\$5,700,000	Milltown (25% of \$7.6 Million)	\$1,900,000
		Dutchman (SBC CD) (60% of \$3.2 Million)	\$1,920,000	Dutchman (SBC CD) (40% of \$3.2 Million)	\$1,280,000
Subtotal	\$0		\$7,620,000		\$3,180,000
Other Projects Subtotal	\$39,037,459		\$30,502,691		\$39,840,775
Running Percent	35.7%		27.9%		36.4%

\$10,800,000

\$109,380,925

Potential Future Funding

C. 2010 Proposed Dutchman Consent Decree for UCFRB Restoration Funds

Groundwater		Aquatic		Terrestrial	
		Dutchman CD (60%)	\$3,780,000	Dutchman CD (40%)	\$2,520,000
Subtotal	\$0		\$3,780,000		\$2,520,000
Running Subtotal	\$39,037,459		\$34,282,691		\$42,360,775
Running Percent	33.7%		29.6%		36.6%

\$6,300,000

\$115,680,925

D. 2010 Grant Proposals requests for Restoration Funds

Groundwater		Aquatic		Terrestrial	
ADLC Meters	\$3,622,708	Butte Fishing Pond/Open Space (50%)	\$783,499	Butte Fishing Pond/Open Space (50%)	\$783,499
ADLC WL Y9	\$2,644,390	CFC Racetrack	\$500,000	DLVCD Native Plants	\$252,279
B-SB Dam Pump	\$3,500,000	Rocky Mtn Super Computer (33.3%)	\$125,387	East Ridge Maud S Canyon Trail	\$355,920
B-SB Transmission Line	\$2,760,000	UofM Nutrients	\$268,367	Rocky Mtn Super Computer (33.3%)	\$125,387
B-SB WL Y10	\$1,817,546	WRC Cottonwood	\$289,647		
Rocky Mtn Super Computer (33.3%)	\$125,387				
2010 Proposal SubTotal	\$14,470,031		\$1,966,900		\$1,517,085
Running Subtotal	\$53,507,490		\$36,249,590		\$43,877,860
Running Percent	40.0%		27.1%		32.8%

\$17,954,015

\$133,634,940

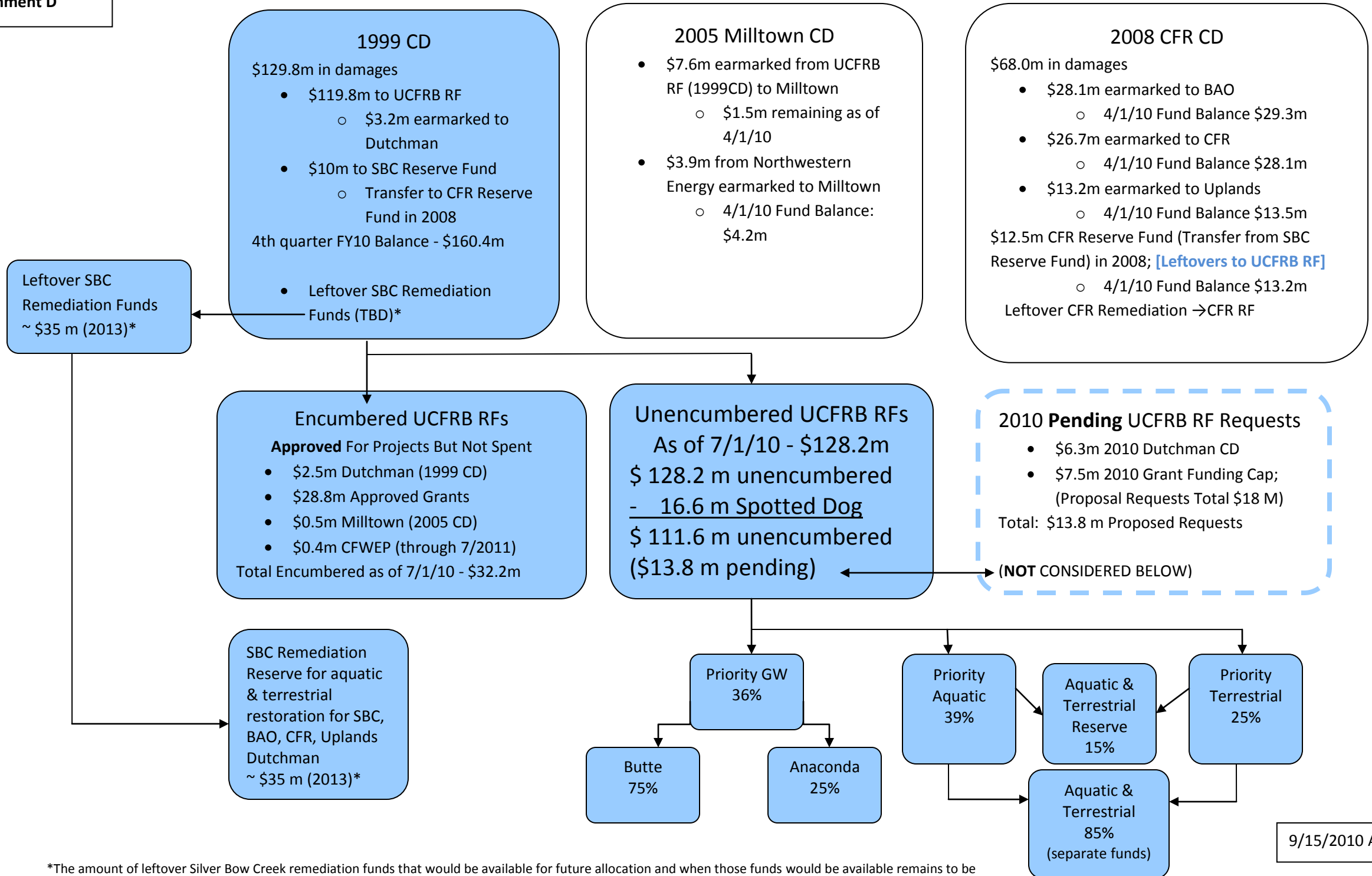
E. Summary of Educational/Database Projects

(these are included in tables above)	
Bird's Eye View Education Project	\$124,995
Browns Gulch Education PDG	\$17,602
Clark Fork Ed. Program	\$698,801
Milltown Education PDG	\$23,914
Ramsay School	\$16,151
U of M Database Planning	\$9,550
Rocky Mtn Super Computer	\$376,160
Total	\$1,267,173
Percent of Total	0.9%

F. Summary of Recreational Projects

(these are included in tables above)	
Bonner Pedestrian Bridge	\$975,652
Butte Fishing Pond/Open Space PDG	\$25,000
Butte Fishing Pond/Open Space*	\$1,566,998
Deer Lodge Trail PDG	\$25,000
East Ridge Maud S Canyon Trail*	\$355,920
Garrison Trails Project	\$24,974
Haefner PDG	\$24,750
Johnson/Cottonwood Creek Trail	\$633,015
Milltown/Two Rivers Rec. Facilities (50%)	\$1,598,249
Silver Bow Creek Greenway (30%)	\$4,669,477
Thompson Park Improvement Project(80%)	\$790,722
Warm Springs Ponds Rec. Improv.	\$97,577
Washoe Park PDG	\$25,000
Total	\$10,812,334
Percent of Total	8.1%

* these projects have not been fully evaluated by staff therefore the percent of recreation is estimated and may be subject to change in the future



9/15/2010 AC

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