

**Final Response to Public Comments on  
the *February 2012 Draft UCFRB  
Interim Restoration Process Plan***

**PREPARED BY:  
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NATURAL RESOURCE DAMAGE PROGRAM  
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**May 2012**



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**Response to Public Comments on the  
*February 2012 Draft UCFRB Interim Restoration Process Plan***

**SECTION I. INTRODUCTION**

On February 21, 2012, the Natural Resource Damage Program (NRDP) released the *Draft Upper Clark River Basin Interim Restoration Process Plan* (“*Draft Process Plan*”) for public comment through March 23, 2012. NRDP sent notices of its availability for comment to members of the UCFRB Remediation and Restoration Advisory Council and to over 60 individuals/entities. The availability of this document for public comment was announced on the NRDP website and in postcards sent to over 400 individual/entities on February 23, 2012 and announced through display ads that ran twice in Basin-area newspapers in late February and early March. The NRDP also summarized the *Draft Process Plan* at the Advisory Council’s meeting on February 29, 2012 and the Trustee Restoration Council’s meeting on March 6, 2012.

A total of four entities submitted written comments during the public comment period and one entity submitted late comments. See Attachment A for a list of commenters and Appendix 1 for copies of comment letters, which are numbered 1 to 5. Four of the five letters either indicated general support of or appreciation for the *Draft Process Plan*. All five letters suggested one or more changes to the *Draft Process Plan*. All the suggested changes pertain to the parts of the *Draft Process Plan* that are specific to restoration planning process for aquatic and terrestrial resources.

This document further summarizes the comments received, with similar comments grouped together by category, and provides the State’s responses organized by these categories. This final version reflects input from the Trustee Restoration Council on a draft of this document considered at their April 10, 2012 meeting. The *Final Process Plan* subsequently approved by the Governor in May 2012 incorporates the changes that are indicated herein to the *Draft Process Plan*.



## **Section II. Comment Summary and Response by Category**

### **Category 1: Support for and/or appreciation of *Draft Process Plan***

**Comment:** Four comment letters indicate appreciation of the State's work on the *Draft Process Plan* and the opportunity to comment on it (1A, 2A, 3A, and 4A). Two letters specifically indicate general support of the plan (3A and 4A). The Clark Fork River Technical Advisory Committee (CFRTAC) and the Clark Fork Coalition comment on the thoroughness of the *Draft Process Plan* (1A and 4A). The Clark Fork Coalition also comments that the process described in the plan is solid and provides a realistic framework for complying with CERCLA restoration planning requirements (4A).

**Response:** The State appreciates this acknowledgement of appreciation and support for the *Draft Process Plan*.

### **Category 2: Priority for restoration work on the Clark Fork River mainstem**

**Comment:** CFRTAC, City of Deer Lodge, and Powell County Planning Department request that the potential restoration projects on the mainstem of the Clark Fork River have the same level of eligibility, priority, attention, and resources as the restoration work for Priority 1 tributary areas (1E, 2C, and 3B). CFRTAC and the City of Deer Lodge recommend that improvements should be encouraged on the Clark Fork River beyond flow augmentation, including projects that will have a positive impact on water quality, fish habitat, fish passage, riparian habitat, and sediment reduction. They note that such projects may not be covered by the separate funds that are earmarked to the remediation and restoration of the mainstem (1E and 2C). Powell County requests that the appropriate level of funding to the mainstem be given adequate consideration (3B).

**Response:** These comments correctly note a prominence given to mainstem flow augmentation on the Upper Clark Fork River based on the Aquatic Prioritization Plan, which designates flow augmentation on the Clark Fork River above Deer Lodge as a Priority 1 and as a Priority 2 below Deer Lodge. (See *Draft Process Plan*, footnote #17 on p. 16.) This reflects current scientific opinion as to what additional measures would be helpful to supplement the remediation and restoration activities that will be conducted and funded via the 2008 Clark Fork River Consent Decree.

While flow augmentation is provided as an example of acceptable projects in the *Draft Process Plan* for the Clark Fork mainstem, other restoration alternatives along the Clark Fork mainstem, such as land acquisitions, are equally eligible for consideration for inclusion in the Aquatic Restoration Plan to be developed by the end of 2012. As stated in section 5.3 of the *Draft Process Plan* (p. 16; emphasis added):

“Relying on the prioritization plans, the State's focus becomes restoration alternatives in the high Priority 1 or 2 areas, consistent with the sequential approach to restoration work advocated in the prioritization plans, **or in the aquatic and terrestrial injured resource areas for which the State made restoration claims.** This *Process Plan* then requires

the application of the evaluation criteria, set forth in Section 6, to those restoration alternatives.”

To help clarify that all potential restoration alternatives along the mainstems, including those types of projects advocated by these commenters, are eligible for consideration in the subsequent restoration planning process, the State added similar language as above to the sentence in Section 5.3.1 of the *Final Process Plan* (p. 16) regarding public solicitation of proposals, as indicated in **bolded language** below:

“As part of this next restoration planning phase, the State will therefore be soliciting from the public, including governmental entities, restoration concepts that would protect or enhance fishery or wildlife resources in Priority 1 and 2 areas **or in the aquatic and terrestrial injured resource areas for which the State made restoration claims**, or enhance recreational services associated with these resources, such as fishing, floating, hunting, wildlife viewing, and hiking.”

It should be understood that the need for/value of any restoration alternatives along the Clark Fork River mainstem will be determined on a specific basis according to the process and criteria specified in *Draft Process Plan*. As noted in the explanation of the legal criterion that evaluates restoration alternatives from the aspect of applicable federal, state, and tribal policies, rules, and laws in Section 6.1 of the *Draft Process Plan* (p. 22; emphasis added): “...As part of the evaluation of this criterion, the State will assess whether the restoration plan alternative would potentially interfere, overlap, or partially overlap with the restoration work covered under current or planned consent decrees or restoration plans, which are identified in Attachment 6-3.” The *Draft Process Plan* provides references to the sections of the Aquatic and Terrestrial Prioritization Plans that summarize the work that has been done or will be done to injured aquatic and terrestrial resource areas using dedicated funding for remediation or restoration of these areas (footnote #15 on p. 15).

### **Category 3: Implementation**

**Comment:** Three comment letters address and offer recommendations specific to the subsequent implementation process. CFRTAC comments about their expectation for more specifics about implementation in the restoration plans; about the importance of public participation in the implementation process; and about the need to find a way to incorporate groups that have strong relationships with private landowners in the restoration process (1B and 1D). The City of Deer Lodge comments about its desire to take part in implementation of the restoration process in partnership with the NRDP, and about the benefits that City can provide to restoration from its relationships with area citizens/landowners (2B). The Clark Fork Coalition requests that the restoration plans provide more detail on how the NRDP plans to work with restoration partners and notes the importance of having this greater specificity to private landowners and the groups that work with them (4E). The Coalition requests that the NRDP develop and describe an implementation plan along with the first draft of the restoration plan (4E).

**Response:** The State will consider this input and requests in developing the draft Aquatic and Terrestrial Restoration Plans. Section 5.3.3 of the *Draft Process Plan* (p. 17) acknowledges that the restoration plans will describe how and when the selected restoration alternatives will be

developed and implemented and that the specifics of implementation will depend, in large part, on the particulars of the alternatives included in the restoration plans. While the State intends for the restoration plans to provide as much information as possible with respect to the how, when, and who of implementation, there will certainly be specifics that need to be determined at a subsequent stage. For example, and as the *Draft Process Plan* indicates, some project partners may be identified in the restoration plans and some may be identified later after those plans have been adopted. To help clarify the State's intention to partner with other entities to develop and implement some of the projects included in the restoration plans, the State revised the following sentence in Section 5.3.3 as follows:

Current text: "The State may partner with other entities to further develop and implement some of the projects, and some projects will be developed and implemented by the State."

**Revised text: "Some approved projects will be developed and implemented by the State and other approved projects will be developed and implemented by other entities in partnership with the State in a manner consistent with State procurement requirements."**

Section 5.3.3 of the *Draft Process Plan* also acknowledges the possible need for implementation plans, in the statement that: "The restoration plans will consider whether the State should issue implementation plans that describe the project development and implementation work to occur over a specified timeframe, such as annually." The State clarified the conditions that would trigger an implementation plan with the following additional sentence: **"The restoration plans will identify which of the alternatives included in the restoration plans are more conceptual in nature, and will be further detailed in subsequent implementation plans."**

**Comment:** The Watershed Restoration Council (WRC) seeks greater public involvement in the restoration planning process and more details on project ranking and implementation in a revised process plan that would subject of additional public comment. The WRC believes the *Draft Process Plan* is too state centered and detracts from public input.

**Response:** See above response regarding implementation. The universe of restoration ideas to be considered covers a broad array. The State believes discussion of restoration alternatives belongs in the restoration plans, which will be subject to public comment, input by the Advisory Council and Trustee Restoration Council, and a final decision by the Governor. With regards to ranking, unlike the previous grants process, the State will not be conducting project ranking. As indicated in the *Draft Process Plan*, the NRDP will use the NRD criteria explained in Section 6 for restoration alternatives included in the draft restoration plans that will then be subject of public comment, input by the Advisory Council and Trustee Restoration Council, and a final decision by the Governor.

The State's role in the restoration planning process is most prominent because the State is the entity legally responsible for the development of restoration plans and for making decisions on the expenditures of natural resource damages. Sections 5.3.1 and 5.3.2 of the *Draft Process Plan* clearly indicate that the State will be soliciting and considering restoration concept proposals from all interested individuals and entities, not just those generated by State entities. The State believes adequate opportunity for public input in the restoration planning process exists through

this solicitation process as well as the significant public involvement outlined in Section 2 of the *Draft Process Plan*.

#### **Category 4: Restoration Plan Revisions and Time Frame**

**Comment:** CFRTAC and the City of Deer Lodge recommend that the *Draft Process Plan* provide for the certainty of biennial review rather than leaving it optional, noting the importance of such a review to allow for improvements, and the substantial learning opportunities that remain with respect to restoration work (1C and 2F).

**Response:** Section 5.4 (p. 18) of the *Draft Process Plan* on “Restoration Plan Revisions and Updates” provides for the possibility of biennial review of the Aquatic and Terrestrial Restoration Plans, but it also provides for the possibility that “a determination to revise the restoration plan can be delayed.” This section recognizes that all the aquatic and terrestrial restoration activities will not be known at the time of the 2012 restoration plan development and that information about aquatic and terrestrial resources in the UCFRB is still developing.

The *Long Range Guidance Plan* (Attachment 1-1 in the *Draft Process Plan*) provides for a review of expenditures and projects to occur at least every five years. While the Terrestrial Prioritization Plan has the same review time frame of at least every five years, the Aquatic Prioritization Plan proposes re-evaluating the priority streams every two years during the first five years. Since some tributary streams remain to be assessed or prioritized, and since the remedial and restoration work on the mainstem of the Clark Fork River is in its initial implementation phase, it is appropriate to provide for an initial review and revision to the Aquatic and Terrestrial Restoration Plans in two years of their approval. The frequency of later reviews/revisions after this initial two year review can be addressed in the subsequent plans. The State revised the text in Section 5.4 of the *Final Process Plan* accordingly, with the revised text indicated in **bolded language**:

“Significant changes to the restoration plans will be subject to public notice and comment before the Governor considers them for adoption. All changes must comply with federal and state laws regarding restoration plans. As stated in Section 5.3.1, the State recognizes that not all the aquatic or terrestrial restoration alternatives will be known at the time of the 2012 restoration plan development. The prioritization plans also recognize that information about aquatic and terrestrial resources in the UCFRB is still developing, and therefore recommend periodic re-evaluation and update of priorities.<sup>1</sup> The Aquatic Prioritization Plan proposed re-evaluating the priority streams every two years during the first five years. **Given these considerations, the State proposes that the Aquatic and Terrestrial Restoration Plans be reviewed and revised two years after the Governor’s approval. The frequency of later reviews/revisions after this initial two year review can be addressed in the subsequent plans.** The revisions to the restoration plans will include a public solicitation of conceptual restoration proposals for potential inclusion into revised restoration plans.”

**Comment:** The City of Deer Lodge comments on the importance of continued efficiency in planning as well as continued work on the ground (2E).

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<sup>1</sup> See p. 17 in the final Aquatic Prioritization Plan and p. 15 in the Terrestrial Prioritization Plan.

**Response:** The schedule and processes provided in the *Draft Process Plan* allow for project implementation to occur concurrently with restoration planning. This has also been the case in the past two years in which implementation of approved grant and other NRD restoration projects continued while planning efforts associated with the *Long Range Guidance Plan* were also underway. With the schedule for completion of the Restoration Plans by the end of 2012, on-the-ground work on some restoration alternatives can start in 2013.

#### **Category 5: Public Outreach on Solicitation Process**

**Comment:** The Clark Fork Coalition comments on the importance of continued public outreach once the process plan is adopted and before project abstracts are due to assure the overall restoration plan process is well understood by all interested parties (4B).

**Response:** The State will use the outreach methods used for the public comment period on the *Draft Process Plan*, as summarized in Section I of this response document, for the solicitation process. The State will also conduct additional outreach recommended by the Trustee Restoration Council at their April 10, 2012 meeting, which involves widespread distribution of a summary of the restoration planning process for aquatic and terrestrial resources to accompany the abstract solicitation form. The State also extended the project abstract submittal the date of June 1, 2011 in the *Draft Process Plan* to June 15, 2012 in the *Final Process Plan* to allow for more outreach and understanding about the solicitation process. NRDP staff have been and will continue to be available to meet with interested groups about the restoration plan process at their request.

#### **Category 6: Early Restoration Proposals**

**Comment:** The Clark Fork Coalition notes its agreement with the exigency requirements for early restoration proposals described in Section 4.1 of the *Draft Process Plan*, noting these requirements are consistent with CERCLA NRD provisions that require NRD settlement funds to be expended in accordance with the terms of a legally sufficient restoration plan (4C).

**Response:** The State agrees with this input. The *Draft Process Plan* recognizes the legal basis for these exigency requirements (p. 11; footnote #10).

#### **Category 7: SSTOU/SBC Excess Fund Reserve**

**Comment:** The Clark Fork Coalition notes its agreement with the provisions in Section 7.3 of the *Draft Process Plan* to defer the development of a restoration plan specific to excess amounts in the SSTOU/SBC Remediation Fund until the excess amount is determined. The Coalition recommends additional provisions in the *Draft Process Plan* that the restoration plans indicate what project ideas that would be eligible for these excess funds and that the overall plan be re-evaluated once any excess funds revert to the UCFRB Restoration Fund (4D).

**Response:** The State agrees with the recommendation that the restoration plans be re-evaluated should any excess funds revert to the UCFRB Restoration Fund, and thus proposes the following additions indicated in **bold language** below to the last paragraph of Section 7.3 in the *Final Process Plan*:

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

The following sentence was also added to Section 5.4 of the *Final Process Plan* on Restoration Plan Revisions and Updates:

**“As further explained in Section 7.3, the Aquatic and Terrestrial Restoration Plans will also be subject to revisions if and when the excess amount in the SSTOU/Silver Bow Creek Remediation Fund is transferred to the UCFRB Restoration Fund.”**

The specific restoration alternatives to be included in the update/revision to the Aquatic and Terrestrial Restoration Plans, which occurs as a result of the excess amount transferred, will be considered at that time.

## ATTACHMENT A. GUIDE TO PUBLIC COMMENTS

### List of Comment Letters Received

Letter No.	Organization	Author	Date Received
<b>Comments Received During the Public Comment Period</b>			
1	Clark Fork River Technical Advisory Committee (CFRTAC)	Kathy Hadley, Board President	March 23, 2012
2	City of Deer Lodge	Mary Ann Fraley, Mayor	March 23, 2012
3	Powell County Planning Department	Brian P. Bender, Planning Director	March 23, 2012
4	Clark Fork Coalition	Christine Brick, Science Director; Will McDowell, Stream Restoration Director, and Andy Fischer, Project Manger	March 23, 2012
<b>Comments Received After the Public Comment Period</b>			
5	Watershed Restoration Coalition	John Hollenback	March 30, 2012

### Categorical Breakdown of Comments

Category No.	Category Title	Letter/Comment No.
1	Support for and/or Appreciation of <i>Draft Process Plan</i>	1A, 2A, 3A, and 4A
2	Priority for restoration work on the Clark Fork River mainstem	1E, 2C, and 3B
3	Implementation	1B, 1D, 2B, 2D, 4E and letter #5
4	Restoration Plan Revisions and Time Frame	1C, 2E, 2F
5	Public Outreach on Solicitation Process	4B
6	Early Restoration Proposals	4C
7	SSTOU/SBC Excess Fund Reserve	4D



# **Appendix 1**

Public Comments Received





P. O. Box 224  
Deer Lodge, MT 59722

March 19, 2012

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

To whom it may concern:

We appreciate the opportunity to comment on the Natural Resource Damage Program's (NRDP) *Draft Upper Clark Fork River Basin Interim Restoration Process Plan*. We were happy to see a plan developed to guide funding of restoration projects in the Upper Clark Fork River Basin. We appreciate the effort that NRDP has undertaken and the attention to consider public opinion during the process. These are public funds and their management is of the greatest public concern.

The planning process that is described within the *Process Plan* seems thorough. Efficiency in the process will be improved by granting certain entities funding without the need to complete the rigorous grant application process that has been the custom in the past.

1A

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Our concern rests in the implementation of the process. Implementation is not described in great detail in the *Process Plan*. Efficiency will be crucial and this new process has great potential to improve the efficiency of funding while also funding specific prioritized goals of the NRDP. The prior program had merit in its transparency and its very public nature of competitive funding. It also had shortcomings in lacking efficiency in separating projects that did not meet the priorities for restoration in the basin. Many worthwhile projects came to the NRDP for funding that did not fall within the true objectives for restoration in the basin. This new process has the opportunity to alleviate this problem but how the NRDP implements this goal while still encouraging public participation will be paramount. We look forward to the specifics of implementation in the more finalized plan that is set for completion in October of 2012.

1B

Biennial review is mentioned in Section 5.4 of the *Process Plan*. However, it is also stated that under certain circumstances this biennial revision "can be delayed". We feel strongly that review is important and should not be delayed. Biennial review will strengthen the program and allow for revision of aspects of the program that are not beneficial. In other words, this plan will not be perfect and periodic review will allow the NRDP and the public it serves to make improvements to the program. We urge that biennial review remain a part of the *Process Plan*.

1C

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We also know that a great deal of projects will be completed on private lands. There are active groups within the basin that have developed strong relationships with private landowners in the basin. The *Process Plan* must find a way to incorporate such groups into the process in order to best involve the landowners and give them a voice in the decisions that will impact their land.

1D

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The priorities for funding aquatic projects on the tributaries of the Clark Fork River are detailed and excellent in terms of specific goals for restoration on specific tributaries. This is commendable work. However, the main stem of the Clark Fork is less detailed and eligible for projects. While flow augmentation is sure to improve water quantity and quality, more improvements should be encouraged on the Clark Fork River that would have a positive impact on overall health of its ecosystem. We understand and agree with the theory that healthy tributaries make a healthy river, but improvements on the Clark Fork itself should not be ignored. There is a great deal of remediation yet to come on the Clark Fork and restoration will coincide with remediation. However, this separate source of funding that is devoted to restoration on the main stem may not cover other projects that have a great potential to improve water quality, water quantity and improve fish habitat and passage and riparian vegetation. We feel it important to give the same respect to the Clark Fork River as other Priority 1 waters in regards to allowing projects to be considered strongly for funding that promise to make these improvements.

1E

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We applaud the efforts that have been put forth by the NRDP and their partners, the Advisory Council, the Trustee Council and the Governor in producing the draft *Process Plan*. We appreciate this opportunity to comment and look forward to helping shape this and future documents that will guide restoration efforts in our great basin.

1A

Sincerely,

*Kathy Hadley*

Kathy Hadley  
CFRTAC Board President

Mary Ann Fraley  
Mayor  
Jana McGill  
City Attorney  
Donna Seaton  
City Clerk / Treasurer

CITY OF  
**DEER LODGE**  
300 MAIN STREET  
DEER LODGE MT 59722-1098

**CITY COUNCIL**  
REX ANDERSON  
DAVID AUSTIN  
LYLE E. GILLETTE, JR.  
TOM GODDARD  
EDWARD M. HEBBE IV  
JACK HINKLE  
MAGGIE HUNTER  
JOHN J. MOLENDYKE

March 23, 2012

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

Natural Resource Damage Program:

The City of Deer Lodge welcomes the chance to comment on the Natural Resource Damage Program's (NRDP) *Draft Upper Clark Fork River Basin Interim Restoration Process Plan*. We appreciate the work done by the NRDP in developing this plan for restoration of the Upper Clark Fork River Basin. Deer Lodge sits proudly at the heart of this restoration effort. We are excited for work to continue to improve our basin. The restoration not only improves the environment we live in but also holds the promise of having an immense positive impact on our economy.

2A

Deer Lodge looks forward to the opportunity to partner with the NRDP in providing the best restoration possible. Please let us know how we can provide help in your efforts to restore our river and our basin. Much of the restoration work will be done in our backyard on our neighbors' land. We have strong relationships with the many people that will be involved in the restoration work to be done. We hope to benefit the restoration with these relationships. Please consider us a trusted resource and friend in the work you will be doing.

2B

Deer Lodge is happy that the Clark Fork River, Cottonwood Creek, Racetrack Creek and Dempsey Creek have been listed within your Priority Areas for restoration. NRDP did a great job of describing restoration activities that are encouraged on the creeks in our area. We feel strongly, however, that more types of projects should be encouraged for restoration on the Clark Fork River. Flow augmentation is extremely important for improving water quality on the Clark Fork River but it is certainly not the only way to improve the river's water quality. Projects that will have a positive impact on water quality, fish habitat, fish passage, riparian habitat, and sediment reduction should also be considered on the Clark Fork River. Even though there is a separate restoration fund for the river, there may be valuable projects that do not fall within the objectives of this fund but are still worthwhile in improving these aspects of the river.

2C

Deer Lodge looks forward to taking part in implementation of the process described in the *Process Plan*. How work will be done is every bit as important as what work is planned. Please remember that we are available and willing to assist in this implementation process.

2D

We hope you understand that there are many who have been patiently awaiting the cleanup of the Clark Fork. We are encouraged by NRDP's efficiency in producing the *Process Plan* and meeting the 60-day deadline. We feel strongly that continued efficiency in planning is important but it is very important to continue work on the ground. We look forward to timely completion of planning so we all can put our planning efforts into motion.

2E

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There is so much to learn during the restoration of our area. Enormous strides will be made and there will be room for improvement. So we encourage that a timeline be set for the work of the program and that the program be reviewed every two years.

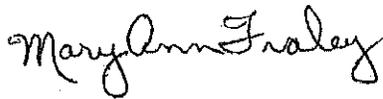
2F

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Deer Lodge would like to thank you for the work you do to make our great Clark Fork River Basin even greater.

2A

Sincerely,



Mary Ann Fraley  
Mayor  
City of Deer Lodge



# Planning Department

Powell County Planning Department • 409 Missouri Ave., Suite 101 • Deer Lodge, Montana 59722  
406.846.9795 / [planning@co.powell.mt.us](mailto:planning@co.powell.mt.us)

March 23, 2012

*Via E-Mail and First Class Post*

Natural Resources Damage Program  
1301 E. Lockey Ave.  
P.O. Box 201425  
Helena, MT 59620-1425

To whom it may concern:

Please accept this letter of support on behalf of Powell County for the Natural Resources Damage Program's (NRDP) *Draft Upper Clark River Basin Interim Restoration Process Plan*. The said *Process Plan* is vital to guide the overall restoration and enhancement of upland, riparian, and aquatic habitats comprising this unique area of Montana. Powell County acknowledges the praiseworthy effort by the NRDP to seek comments to help shape and influence the *Process Plan*, and ensure the most effective application of public funds. 3A

This letter does take the opportunity to express one area of concern with the *Draft Upper Clark River Basin Interim Restoration Process Plan* and that relates to its lack of specific projects described for the Clark Fork River. Certainly, there is immense merit for the NRDP to identify aquatic projects on the River's tributaries as they directly relate to its overall health and vitality. Powell County however cordially requests the NRDP to reexamine the need to direct similar levels of attention and resources to the Clark Fork River as other Priority One identified waters. A commitment in the *Process Plan* for Clark Fork River projects clearly demonstrates NRDP's enthusiasm for not only the River's flows but for its water quality, fisheries, and riparian vegetation. 3B

I am confident NRDP will give this request to apply the appropriate levels of funding to the Clark Fork River adequate consideration. Powell County looks forward to seeing the *Draft Upper Clark River Basin Interim Restoration Process Plan* transformed into a practical and meaningful document through solicited comments.

Sincerely,

Brian P. Bender, AICP  
Planning Director





P.O. Box 7539, Missoula, MT 59807 ph. 406.542.0539

Ms. Carol Fox  
Natural Resource Damage Program  
P. O. Box 201425  
Helena, MT 59620-1425

Re: Draft Upper Clark Fork River Basin Interim Restoration Process Plan

Dear Carol,

On behalf of the Clark Fork Coalition, we'd like to thank NRDP staff for drafting a thorough and comprehensive Restoration Process Plan (RPP) for the development of a final restoration plan, and ultimately for coordinated and effective restoration of natural resources in the Upper Clark Fork River Basin. We believe that the process described in this plan is solid, and that it provides a realistic framework for complying with CERCLA requirements for a restoration plan.

4A

We especially appreciate that the process plan provides for substantial input from communities, organizations, and the public at large. Once a process plan is adopted, and before project abstracts are due in June, we believe it will be crucial for NRDP staff to continue public outreach efforts to be sure that the overall restoration plan process is well-understood by all interested parties. The proposed RPP provides a good basis for this.

4B

Regarding the process for early restoration proposals (p.10), we strongly agree with section 4.1.3 *Project Exigency Requirements* and suggest that any projects considered for funding must show extreme time critical need AND significant resource benefits beyond any shadow of doubt. Early restoration proposals should explain why they can't wait for development of a restoration plan, given that the time difference in implementation is likely to be less than a year. As we've stated previously in our joint letter of July 20<sup>th</sup>, 2010 (with Trout Unlimited and the National Wildlife Federation), we believe that the state of Montana is currently out of compliance with section 111(i) (42 U.S.C. §9611(i)), which provides that funds recovered pursuant to CERCLA's natural resource damage ("NRD") provisions may only be expended in accordance with the terms of a legally sufficient restoration plan. Given this legal requirement, only projects with extraordinary circumstances, if any, should be considered, and any significant expenditure of the restoration fund should wait for the development of a comprehensive, publicly reviewed, and approved restoration plan.

4C

Regarding Section 7.3 *SSTOU/SBC Excess Funds Reserve*, we agree with the provisions of the Long Range Guidance Plan for these funds, and with the provisions stated in the Restoration Process Plan that detailed restoration planning should wait until remediation construction activities are complete and funding for long-term remediation O&M plan is in place. That said, project ideas that meet the criteria for funding with SSTOU/SBC excess funds should be included in the overall restoration plan and flagged, with the thought that they may eventually be

4D

funded from this source. The overall plan should be re-evaluated once the SSTOU/SBC remainders revert to the NRDP general fund.

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Looking further down the road to the development of a restoration plan, and as an entity that currently works on restoration projects in the upper Clark Fork, we would like the restoration plan to provide more detail on how the NRD Program plans to work with restoration partners, whether organizations, local governments, or private individuals. We've had some discussions with staff to try to clarify what eventual project implementation might look like, but we would greatly appreciate it if NRPD staff could develop and describe an implementation plan along with the first draft of the restoration plan. We believe this will be especially important for private landowners as well as groups that work with private landowners.

4E

Thank you for the opportunity to comment on the Restoration Process Plan. We believe that it provides a solid foundation for a successful restoration plan.

4A

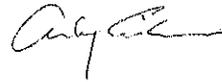
Sincerely,



Christine Brick  
Science Director



Will McDowell  
Stream Restoration Director



Andy Fischer  
Project Manager

**Watershed Restoration Coalition of the Upper Clark Fork River  
1002 Hollenback Road  
Suite C  
Deer Lodge, Montana 59722**

March 28, 2012

Carol Fox  
Restoration Program Chief  
Natural Resource Damage Program  
Montana Department of Justice  
P.O. Box 201425  
Helena, Montana, 59620-1425

**RECEIVED**

**MAR 30 2012**

NATURAL RESOURCE  
DAMAGE PROGRAM

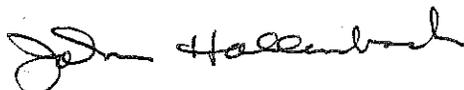
Dear Carol

Thank you for your recent visit with us regarding the Draft Upper Clark Fork River Basin Interim Restoration Process Plan. It is evident that the staff has spent a great deal of time and effort in its development. I appreciate the fact that you were open to accepting comments and acknowledged that not all of the details are yet in place.

At this time I would like to provide you additional response to the plan on behalf of the Watershed Restoration Coalition (WRC). The WRC believes that the draft needs to look for ways to increase public input. The WRC believes the current draft is too state centered and detracts from public input. Also there are too many unanswered process questions such as how the projects submitted by the public will be ranked and by whom, and how organizations and local governments will be engaged in implementing their proposed projects if selected to be placed in the final plan. We hope that the public will be provided that information and more and have an opportunity to comment on those issues before the final plan is put in place.

Thanks again for the opportunity to make comment on the draft document.

Sincerely Yours



John Hollenback  
Chairman  
WRC