

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



MIKE COONEY
LT. GOVERNOR

**Trustee's Modifications to Plan Amendments Based on Public Comment,
and Approval of Plan Amendments as Modified**

On July 23, 2019, the Governor, as the Trustee for the State's natural resources under the natural resource damage (NRD) provisions in the state and federal superfund laws, by and through the Natural Resource Damage Program (NRDP), proposed certain amendments (Amendments) to the: Upper Clark Fork River Basin Aquatic and Terrestrial Resources Restoration Plans (UCFRB Restoration Plans); the Butte Area One Restoration Plan (BAO Plan); and the UCFRB Restoration Fund/Butte Groundwater Restoration Plan (BSB GW Plan) (together, Plan Amendments). These proposed amendments were and are intended to provide a funding source for the remaining components of the State's Parrot Tailings Waste Removal Project (Parrot Project), as described in and approved by the Butte Area One Restoration Plan Amendment – Parrot Tailings Removal (December 2016) (Parrot Amendment). The proposed amendments are based on and consistent with the requirements of the Final 2012 Upper Clark Fork River Basin Interim Restoration Process Plan (2012 Process Plan), the Butte Area One Final Restoration Process Planning Document, as well as the restoration plans listed above.

The amendments were released on July 23, 2019, to the public and to the Upper Clark Fork River Basin Advisory Council (UCFRB AC) and the Butte Natural Resource Damage Restoration Council (BNRC), for a 30-day public comment period. The Trustee considered the comments submitted in reaching the decision and modifications below. Those comments, and the Trustee's responses, are summarized in the Response to Comments document made public along with this decision.

Upon consideration of public comment, the Trustee makes the following revisions to the Amendments:

- 1. BAO Restoration Plan.** The amount to be transferred from the Butte Area One Restoration Fund (BAO Fund) to the NRDP Parrot Tailings Waste Removal Fund (Parrot Fund) is reduced to \$5.3 million, from \$5.8 million as proposed in the BAO Plan Amendment. That amount is comprised of \$3.0 million from the Stream Restoration category, and \$2.3 million from the Mine Waste Area Restoration/ Revegetation category.
- 2. Butte Groundwater Restoration Plan.** The amount to be transferred from the UCFRB Restoration Fund/ Butte Groundwater Restoration to the Parrot Fund shall be increased to \$5.2 million, from \$4.7 million as proposed in the BSB GW Plan amendment, to be taken from unallocated interest and unencumbered project funds.

3. SSTOU/SBC Remediation Fund. The amount to be proposed by MDEQ to EPA for transfer from the SSTOU/SBC Remediation Fund to the UCFRB Restoration Plans, as excess to the SSTOU/SBC remedy, will be increased to \$5.0 million, from the \$4.0 million proposed, to be allocated as specified in 4. (a) and (b) below.

4. UCFRB Aquatic and Terrestrial Resources Restoration Plans.

- (a) Upon EPA approval of the future transfer of the SSTOU/SBC Excess Remediation Funds, referenced in paragraph 3, above, the first \$2.5 million of those transferred funds would be then be allocated to the BAO Restoration Plan for priority stream restoration and riparian habitat restoration in Upper Silver Bow Creek, Blacktail Creek, Basin Creek, and tributaries. These funds would be used for projects that contribute to the water quality and quantity in Silver Bow Creek and that improve trout populations in the reach of Silver Bow Creek within BAO and its tributaries. Actions that would be prioritized would include, that improving fish passage, decreasing fish entrainment, improving water quantity, and improving woody vegetation where insufficient riparian habitat current exists. These restoration actions would be coordinated with waste removal and other restoration activities in the Silver Bow Creek corridor and would be implemented consistent with the BAO Restoration Plan.
- (b) In addition, and consistent with the 2012 Long-Range Plan Guidance Plan and the 2012 Final Upper Clark Fork River Basin Interim Restoration Process Plan, the remaining \$2.5 million from that future SSTOU Remediation excess transfer will be 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.
- (c) As proposed, the transfer of the currently remaining \$8 million of the funds transferred from the SSTOU/SBC Remediation Fund to the UCFRB Restoration Fund in 2016, as excess to the SSTOU/SBC remedy, and which were at that time placed in the UCFRB Aquatic and Terrestrial Reserves until further allocated, will be transferred to the Parrot Fund, with the sub-allocations as described in the Amendment.

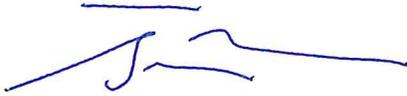
5. Expenditure and Reimbursement Proportions. Each of the Plan Amendments specified the relative proportions (in percentages) by which the funds transferred to the Parrot Fund will be expended (after first expending the existing Parrot Fund balance), and then reimbursed in the event there are future settlement proceeds available for such purpose. Those proportions were based on the total relative contributions from each of the three funds to the Parrot Fund and includes the previous contributions from the BAO Fund of \$10 million and from the UCFRB Restoration Fund/SSTOU Excess Fund of \$8.5 million. Considering the above modifications, those percentages are modified as outlined below. This new set of proportions is reached based on the net contribution of the BAO Fund after the reimbursement of \$2.5 million, as specified in 4.(a), above.

- (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.

Approval of Plan Amendments, As Modified

As the Trustee, I hereby approve the amendments to the Upper Clark Fork River Basin Aquatic and Terrestrial Resources Restoration Plans, the Butte Area One Restoration Plan, and the UCFRB Restoration Fund/Butte Groundwater Restoration Plan that were issued for public comment on July 23, 2019, all as modified in this decision document, above.



Governor Steve Bullock

9/20/19

Date