CRITERIA

Stage 1 Legal Criteria

The Stage 1 Legal Criteria that the BNRC, with assistance from the NRDP, used to evaluate restoration alternatives are as follows:

Technical Feasibility: This criterion evaluates the degree to which a project employs well-known and accepted technologies and the likelihood that a project will achieve its objectives. Obviously, projects that are technologically infeasible will be rejected. However, projects that are innovative or that have some element of uncertainty as to their results may be approved. Different projects will use different methodologies with varying degrees of feasibility. Accordingly, application of this criterion will focus on an evaluation of a project's relative technological feasibility.

Relationship of Expected Costs to Expected Benefits: This criterion examines whether a project's costs are commensurate with the benefits provided. In doing so, the costs associated with a project, including costs other than those needed simply to implement the project, and the benefits that would result from a project, will be determined. Application of this criterion is not a straight cost-benefit analysis, nor does it establish a cost-benefit ratio that is by definition unacceptable. While it is possible to quantify costs, quantifying benefits is more difficult. Requiring projects to meet some established cost-benefit ratio would likely result in the rejection of many worthwhile projects because of the difficulty in quantifying the benefits to resources and services resulting from the implementation of the projects.

Cost-effectiveness: This criterion evaluates whether a particular project accomplishes its goal in the least costly way possible. To apply this criterion in a meaningful fashion, all of the benefits a project would produce must be considered, not just cost; otherwise the focus would be too narrow. Take the example of a project that would fully restore a given resource in a short period of time compared to another project that would restore the same resource at less cost but over a longer period of time. Considering only that the second project is less expensive than the first project ignores the benefits resulting from a relatively shorter recovery period. In this example, since an accelerated recovery time is a benefit, it would need to be factored into a determination of cost-effectiveness.

Results of Response Actions: This criterion considers the results or anticipated results of response actions underway, or anticipated, in the Upper Clark Fork River Basin. Numerous response actions are ongoing and additional response actions are scheduled to begin in the next several years, continuing for many years into the future. Application of this criterion will require assessment of response actions at an adequate level of detail, given the inherent uncertainties associated with this task, in order to make projections as to their effects on resources and services. Consideration of response actions will occur in two principal contexts:

- Evaluating what is necessary in the way of restoration of resources and services in light of the ongoing and planned response actions.

- Evaluating the degree of consistency between a project and a response action looking at whether a project builds on a response action or, at the other end of the spectrum, seeks to undo a response action. Those projects that do the former as opposed to the latter will generally be favored.

Adverse Environmental Impacts: This criterion weighs whether, and to what degree, a project will result in adverse environmental impacts. Specifically, there will be an evaluation of significant adverse impacts, which could arise from a project, short term or long term, direct or indirect, including those that involve resources that are not the focus of the project. To do so, the dynamics of a project and how that project will interact with the environment must be understood.

Recovery Period and Potential for Natural Recovery: This criterion evaluates the merits of a project in light of whether the resource is able to recover naturally and, if a resource can recover naturally (i.e., without human intervention), how long that will take. This will place a project's benefits in perspective by comparing the length of time it will take for the resource to recover if the project were implemented, with the length of time for natural recovery. (The term "recovery" refers to the time it will take an injured natural resource to recover to its "baseline," i.e., pre-injury condition.) If a resource will not recover without some action or if natural recovery will take a long time, a restoration action may very well be justified. Conversely, if a resource is expected to recover on its own in a short period of time, a restoration action may not be justified.

Human Health and Safety: This criterion evaluates the potential for a project to have adverse effects on human health and safety. Such a review will be undertaken not only to judge a particular project but also to determine if protective measures should be added to the project to ensure safety.

Federal, State, and Tribal Policies, Rules and Laws: This criterion considers the degree to which a project is consistent with applicable policies of the State of Montana and applicable policies of the federal government and Tribes (to the extent the State is aware of those policies and believes them to be applicable and meritorious). In addition, projects must be implemented in compliance with applicable laws and rules, including the consent decrees and this restoration planning process.

Resources of Special Interest to the Tribes and DOI: This criterion considers whether an alternative is consistent with the provisions of the State's Memorandum of Agreement (MOA) with the Department of Interior and Confederated Salish and Kootenai Tribes.[1] Pursuant to the MOA, the State is to pay particular attention to natural resources of special interest to the Tribes and/or DOI, including attention to natural resources of special environmental, recreational, commercial, cultural, historic, or religious significance to either the Tribes or the United States.

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[1] Memorandum of Agreement among the State of Montana, Confederated Salish and Kootenai Tribes and United States Department of Interior Regarding Restoration, Replacement, or Acquisition of Natural Resources in the Clark Fork River Basin, dated November 1998. This agreement is available from the NRDP website at http://doj.mt.gov/lands/naturalresource/grantapplications.asp#guidance.

The MOA also provides for the State to pay particular attention to "Tribal Cultural Resources" or "Tribal Religious Sites," as those terms are defined in the MOA.

Stage 2 Policy Criteria

In addition to the legal criteria, the BNRC has selected the following policy criteria that will be applied when considering prospective restoration projects for Butte Area One. Prospective projects need not meet all of these criteria to be recommended for implementation; however, generally (all else being equal), projects that address these criteria will be ranked higher than those that do not. These policy criteria are reflective of the BNRC's goals (see Attachment B) and listed in order of importance to the BNRC.

Restoration of Injured Resources: This criterion will examine whether and to what extent a project directly restores injured resources. Preference will be given to restoration over replacement of injured resources and to restoration activities that integrate with remediation activities.

Public Support: This criterion will assess the level of public support for a project. Preference will be given to those projects with demonstrated public support over those without such demonstrated support.

Benefits to Butte Area One: This criterion will examine the benefits that will occur specifically to the injured groundwater and surface water resources of Butte Area One. Preference will be given to projects that offer benefits to these injured natural resources and the services they provide over projects that benefit resources and associated services outside of Butte Area One.

Silver Bow Creek Ecosystem Health: This criterion examines the relationship between a particular project and overall resource conditions in the Silver Bow Creek Watershed. Preference will be given to projects that fit within a broad ecosystem concept in that they improve a resource problem(s) when viewed on a watershed scale (including how it helps protect the downstream areas of Silver Bow Creek from further releases of hazardous substances), are sequenced properly from a watershed management approach, and are likely to address multiple resource problems in the Silver Bow Creek watershed. As part of the evaluation of this criterion, priorities and projects that meet the legal threshold identified through other relevant documents, including but not limited to those listed in Attachment D, will be considered.

Long-Term Effectiveness: The long-term effectiveness of a project will be evaluated. Preference will be given to projects that offer benefits in the long-term over those that offer short-term benefits.

Matching Funds and Cost Sharing: This criterion examines whether and to what degree a project, or the selected portion of a project proposed for restoration funding, has funding from another source. Leveraging the recovered natural resource damages produces obvious efficiencies.

Coordination and Integration: The degree to which a restoration project is coordinated or integrated with other ongoing or planned actions in Butte and the surrounding area of the Silver Bow Creek watershed will be examined. This is in addition to the coordination with EPA response actions, which is separately addressed under the "Results of Response Actions" criterion. Projects that can be efficiently coordinated with other actions may achieve additional cost savings.

Normal Government Functions: This criterion evaluates whether a project involves activities for which a governmental agency would normally be responsible or that would receive funding in the normal course of events and would be implemented if recovered natural resource damages were not available. BAO settlement funds may be used to augment funds available to government agencies, if such cost sharing would result in the implementation of a restoration project that would not otherwise occur through normal government function. Based strictly on this criterion, a project involving activities that would fall within normal government responsibilities may be ranked lower than a project that does not fall within this category.