

STATE OF MONTANA
OFFICE OF THE GOVERNOR
Executive Order No.11-2011

EXECUTIVE ORDER CONTINUING THE UPPER CLARK FORK RIVER BASIN REMEDIATION AND
RESTORATION ADVISORY COUNCIL, AS AMENDED

WHEREAS, the federal Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), and the Montana Comprehensive Environmental Cleanup and Responsibility Act ("CECRA") allow states as trustees for natural resources to recover monetary damages for injuries to natural resources caused by releases of hazardous substances; and

WHEREAS, in 1983 the State of Montana ("State"), pursuant to its role as trustee, filed suit in federal court against the Atlantic Richfield Company ("ARCO") alleging that the company is liable for injury to the natural resources of the Upper Clark Fork River Basin; and

WHEREAS, the Governor acts as the trustee for the State's natural resources and of any damages recovered to compensate the public for injuries to those resources as permitted under CERCLA; and

WHEREAS, in 1999 the United States District Court for the District of Montana approved a partial settlement of *Montana v. ARCO* that resulted in the State obtaining, among other awards, approximately \$135 million in natural resource damages for some but not all of the State's claims against ARCO; and

WHEREAS, in 2008, the United States District Court of the District of Montana approved a settlement in *Montana v. ARCO* that resulted in the State obtaining, among other awards, an approximate additional \$72.5 million in natural resource damages as a complete and final settlement of the State's natural resource damages claims against ARCO; and

WHEREAS, local officials and citizens in the Upper Clark Fork River Basin desire the opportunity for input concerning how the monetary damages recovered by the State as a result of this lawsuit will be used; and

WHEREAS, CERCLA requires that natural resource damages be used only to restore, replace, or acquire the equivalent of the injured natural resources that are the subject of the litigation [42 U.S.C. 9607 (f)(1)]; and

WHEREAS, in addition to the natural resource damages litigation involving the Upper Clark Fork River, the Montana Department of Environmental Quality has worked with the United States Environmental Protection Agency under cooperative agreements that provide funding to the State and define state and federal agency roles for directing the remediation of various operable units (management/administrative units) within the Upper Clark Fork River Basin National Priority List sites, as authorized under CERCLA; and

WHEREAS, as a result of these interests of the public and State in natural resource damage and remediation issues, the initial Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council was created by Executive Order No. 8-98 on April 23, 1998, and continued by subsequent Executive Orders No. 10-00 on April 25, 2000, No. 08-02 on April 1, 2002, No. 06-04 on March 31, 2004, No. 6-2005 on June 1, 2005, No. 28-2006 on January 19, 2006, No. 26-2007 on December 17, 2007, No. 1-2009 on January 5, 2009, and No. 07-2009 on July 31, 2009.

NOW, THEREFORE, I, BRIAN SCHWEITZER, Governor of the State of Montana, pursuant to the authority vested in me by the laws and Constitution of the State of Montana, do hereby continue the Upper Clark Fork River Basin Remediation and Restoration Advisory Council (hereinafter, "Council") as provided in this Executive Order.

PURPOSE:

The purpose of the Council is to advise the Governor as trustee of the State's natural resources pursuant to CERCLA and CECRA with respect to issues involving restoration, replacement, or acquisition of the equivalent of the injured natural resources that were the subject of the litigation in the Upper Clark Fork River Basin, including the use of the funds that were recovered from settlement of the litigation. The Council shall:

- work with and advise the Natural Resource Damage Program as the Program develops and prepares its draft of the annual restoration work plan and any modification of the Restoration Plan Procedures and Criteria;
- advise the Governor as trustee as to the use of the funds that were recovered through settlement in accordance with the Governor's restoration plan and as otherwise provided by law;
- establish a procedure for receiving input from and sharing information with the public and the various interested agencies;
- advise the Upper Clark Fork River Basin Trustee Restoration Council (consisting of the Governor's Chief of Staff, the Directors of the Departments of Environmental Quality, Fish, Wildlife, and Parks, and Natural Resources and Conservation, the Chair of the Upper Clark Fork River Basin Remediation and Restoration Advisory Council, and the Attorney General, serving as a non-voting advisor to the Upper Clark Fork River Basin Trustee Restoration Council). The advice of the Council will not be considered to the exclusion of input of other interested individuals or groups. The existence of and advice given by the Council does not in any way diminish the powers of the Governor as trustee of the State's natural resources pursuant to CERCLA and CECRA, nor is any advice of the Council intended to bind the State in any litigation or related negotiations.

The Council may adopt procedures related to its interface with the Natural Resource Damage Program and other matters that fall within its purpose, as set forth above. The Council's procedures may not conflict with law or any court order, and any procedures adopted by the Council must be approved by the Governor.

COMPOSITION:

The Council will consist of up to 10 voting members and up to 3 non-voting members representing the interests of the natural resource damage area in the Upper Clark Fork River Basin, as follows:

1. Citizen Voting Members. The Council will consist of eight citizen members, appointed by the Governor, who are residents of Deer Lodge County, Granite County, Missoula County, Powell County and Silver Bow County ("counties"), the counties which comprise the Upper Clark Fork River Basin.
2. Federal and Tribal Government Voting Members. The Council will also include a representative of the Confederated Salish & Kootenai Tribes, designated by the Tribal Chair; and a representative of the United States Department of the Interior, designated by the Secretary of the Interior.
3. State Government Non-Voting Members. The Council's non-voting members will include:
 - Director of the Department of Environmental Quality, or the Director's designee;
 - Director of the Department of Fish, Wildlife and Parks, or the Director's designee; and
 - Director of the Department of Natural Resources and Conservation, or the Director's designee.

The Governor shall appoint a chair from among the Council's citizen voting members, and the Natural Resource Damage Program will provide technical and administrative support for the Council.

The names of the Council members will be submitted by separate letter to the Secretary of State.

DURATION:

This Executive Order is effective July 31, 2011. The Council shall exist for a period of two years from the effective date.

GIVEN under my hand and the GREAT SEAL of the State of Montana this 28 day of July, 2011.


BRIAN SCHWEITZER, Governor

ATTEST:


LINDA McCULLOCH, Secretary of State