

STATE OF MONTANA  
OFFICE OF THE GOVERNOR  
Executive Order No. 6 - 2005

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EXECUTIVE ORDER CONTINUING THE UPPER CLARK FORK RIVER BASIN  
REMEDATION AND RESTORATION EDUCATION ADVISORY COUNCIL, AS  
AMENDED, AND RENAMING IT THE UPPER CLARK FORK RIVER BASIN  
REMEDATION AND RESTORATION ADVISORY COUNCIL

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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, local officials and citizens in the Upper Clark Fork River Basin desire the opportunity for input concerning how any monetary damages recovered by the State as a result of this lawsuit will be used and the opportunity to be informed regarding the State's continuing natural resource damage litigation against ARCO; 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 ongoing litigation involving the Upper Clark Fork River, the Montana Department of Environmental Quality works 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, and No. 06-04 on March 31, 2004.

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, as amended, the Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council, renamed as 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 are the subject of the litigation in the Upper Clark Fork River Basin, including the use of any funds that have been recovered from settlement or trial of the litigation. The Council shall advise the Governor as trustee as to the use of such funds in accordance with a restoration plan prepared by the Governor as trustee and as otherwise provided by law. In addition, the Council shall 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 pending litigation or related negotiations.

The Council shall establish a procedure for receiving input from and sharing information with the public and the various interested agencies.

**COMPOSITION:**

The Council will consist of up to 14 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 citizen member(s), appointed by the Governor, who reside in Deer Lodge County, Granite County, Missoula County, Powell County and Silver Bow County ("counties"), the counties which comprise the Upper Clark Fork River Basin. Each of the above counties will have not less than one member and not more than three members appointed to the Council.
2. Federal and Tribal Government Voting Members. The Council will 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 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:**

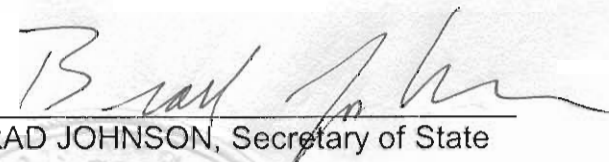
This Executive Order is effective immediately and shall terminate on December 31, 2005, unless terminated earlier or extended by subsequent Executive Order.

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GIVEN under my hand and the GREAT SEAL of the State of Montana this 1<sup>st</sup>  
day of June, 2005.

  
BRIAN SCHWEITZER, Governor

ATTEST:

  
BRAD JOHNSON, Secretary of State

